**LICENSE AGREEMENT**

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**TO INSTALL, CONSTRUCT AND OPERATE**

This licence Agreement to Install, Construct, and Operate (the “Agreement”) is effective [DATE],

**BETWEEN: [PROGRAMMER NAME]** (the "Programmer"), a company organised and existing under the laws of the [STATE/PROVINCE], with its head office located at:

 [YOUR COMPLETE ADDRESS]

**AND: [YOUR COMPANY NAME]** (the "Developer"), a company organised and existing under the laws of the [STATE/PROVINCE] of [COUNTRY], with its head office located at:

 [COMPLETE ADDRESS]

WHEREAS Developer desires to install, operate and maintain [SPECIFY] (the “Equipment”) on the property of Programmer, the location described in Schedule “A” hereto;

WHEREAS Programmer agrees to such installation, operation and maintenance, subject to the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the premises and the covenants and agreements set forth herein, Programmer and Developer covenant and agree as follows:

**1. DEFINITIONS**

In this licence Agreement, unless there is something in the subject matter or context inconsistent therewith, the expressions following shall have the meanings indicated below:

**Actual Cost:** The total cost to Programmer of performing any work billable to Developer pursuant to this licence Agreement, including, in addition to the labour rate, the costs or amounts payable or incurred *in re*spect of annual vacations, job security provisions, pension, welfare (medical, dental, etc.), Employment Insurance, Worker’s Compensation or any like cost or imposition.

**Associated Equipment and Hardware:** All aboveground Equipment on Programmer’s property.

**Claims:** Claims and liabilities of any and every nature whatsoever including, but not limited to:

1. all claims, liabilities, demands, suits, proceedings, judgments, decrees and awards arising out of or relating to harms, injuries, damages, death or destruction of or to person, property, or business, or arising out of or relating to any violation of (or failure to comply with) any applicable law;
2. all theories of relief recognised at law or in equity (including, but not limited to, theories of relief that impose liability without proof of fault or negligence);
3. all losses, damages (including punitive and exemplary damages and awards of attorneys’ fees), environmental costs and damages (including investigation and remediation expenses, removal costs, and natural resource damages), expenses (including reasonable attorneys’ fees), costs, penalties, forfeitures and fines; and

 (iv) awards made under any act respecting industrial accidents and occupational diseases or similar legislation, actions and proceedings.

**Programmer Property:** The property of or used by Programmer.

**Event of Force Majeure**: A fortuitous event, superior force, acts of God, fire, strikes, lockouts, riots, and any other disturbance such as a war, blockade, disaster and insurrection.

**Fee:** The annual fee payable by Developer to Programmer with respect to this licence including without limitation the monthly rental payments stipulated at subsection 4(d) hereof.

**Inflation Factor:** The Inflation Factor as determined according to Section 4(e).

**Inflation Index:** The Inflation Index is the number published monthly as the Consumer Price Index, All Items, for [SOUTH AFRICA] (or any successor index of inflation of the whole of the [SOUTH AFRICA] economy) by the parties (or any successor thereto).

**Initial Term:** The period from [DATE] to [DATE].

**License:** The licence granted by Programmer to Developer pursuant to Section 2.

**Licensed Premises:** Any portion of Programmer Property that is subject to the License.

**Linear Foot:** A measuring unit equal to [NUMBER] ([NUMBER]) inches in length, English Measure.

**Project:** The Associated Equipment and Hardware, and any modification, replacement and additions thereto, on Programmer Property.

**Project Coordinator:** The person designated by Programmer to act as project coordinator with respect to all work permitted to be carried out by Developer pursuant to the licence on Programmer Property, or his (her) representative.

**Project Schedule:** The schedule as proposed by Developer and approved by Programmer pursuant to Section 7 hereof.

**Renewal Term:** The term of the renewal hereof upon the expiration of the Initial Term, pursuant to Section 3 hereof.

**Subsidiary:** Has the meaning ascribed to the term “subsidiary body corporate”;

**Term:** The term of the licence applicable to the Project, as described in Section 3, which specifically includes the Initial Term, and to the extent applicable, the Renewal Term, unless earlier terminated.

**2. GRANT OF LICENSE**

Subject to the terms and conditions hereof, Programmer hereby grants to Developer and Developer hereby accepts from Programmer, the non-exclusive right and permission to install, construct, operate, maintain, modify, repair, add-to, re-install, relocate, remove and replace [SPECIFY] along, in, under and, upon written approval by Programmer, on or over the Programmer Property, at the locations described in Schedule “A”, and in all cases subject to the terms of this licence Agreement.

The licence applicable to the above is referred to herein as the “License” applicable to the “Project”. The licence shall be irrevocable for its Term except as specifically provided herein.

By granting this License, Programmer is not conveying any real property interest in the Programmer Property nor any right, title or interest not specifically set forth hereunder. The rights granted to Developer herein constitute a licence only and shall not under any circumstances whatsoever constitute a right by Developer to have or claim exclusive possession of the licenced Premises and this licence shall not constitute nor be interpreted to be either a partnership agreement, employment agreement, lease or joint venture agreement made between the parties. Developer shall exercise its rights under this licence Agreement in a manner which does not interfere with existing rights of third parties occupying or using any part of the Programmer Property.

Programmer hereby acknowledges and agrees that the Equipment in place as at the date hereof at the locations mentioned in Attachment “A” is acceptable to it and otherwise in compliance with the provisions of this licence Agreement.

**3. LICENSE TERM FOR THE PROJECT**

The Initial Term of the licence applicable to the Project shall commence as of [DATE] and shall continue until [DATE].

Provided it has complied with all terms and conditions herein contained, Developer will have the right, at its option, upon written notice to Programmer not less than [NUMBER] ([NUMBER]) months prior to the expiry of the Initial Term, to cause the term of this licence Agreement to be extended for a further period of [NUMBER] ([NUMBER]) years commencing on the day following the expiry of the Initial Term (the “ Renewal Term”), upon the same terms and conditions as contained in this licence Agreement, save for the right to renew and for the Fee, which shall be negotiated between the parties during the notice period and which fee shall correspond to prevailing market rates at that time but shall not be less than the current fee at the time of expiry of the Initial Term. In the event that the parties should be unable to agree on the Fee to apply during the Renewal Term, the Fee shall be definitively determined by final, binding and non-appealable arbitration, excluding any recourse before the courts of law, in accordance with the provisions of the law of [PROVINCE] in force at the time this licence Agreement is signed and to which the parties declare they have adhered, to be heard before a single arbitrator to be appointed by both parties.

In the event that the parties are unable to agree on such arbitrator, such arbitrator shall be appointed by a Judge of the [PROVINCE] Court (General Division) upon application in that regard by either party. The determination made by the said arbitrator shall be final and binding on both parties. Each party shall pay one-half (1/2) of the costs and expenses of the arbitrator (and their own legal and other costs of preparing and presenting its case). The provisions of this subsection shall be deemed to be a submission to arbitration within the provisions of the law. If neither party submits the matter to arbitration as contemplated above prior to the commencement of the said renewal term, the Fee for each year of the said renewal term shall continue to be calculated in the same manner as described in Section 4(b) hereof.

**4. FEES**

In consideration of this License:

a. During the [NUMBER] ([NUMBER]) year of the original Term, Developer shall pay to Programmer a Fee of [AMOUNT] (R [AMOUNT]). However, notwithstanding anything to the contrary herein contained, the Fee for the first (1st) year of the Term shall not become payable until complete execution of this licence Agreement and the issuance of an invoice therefore.

b. During each of the next [NUMBER] ([NUMBER]) years remaining in the original Term, Developer shall pay to Programmer a Fee of [AMOUNT] cents (R [AMOUNT]), multiplied by the Inflation Factor for the month of [MONTH] of each such year beginning in the second (2nd) year of the original Term.

c. Any additions to or deletions from the Fee in the previous year will be adjusted between the parties as at the beginning of the next succeeding calendar year.

d. The Fee shall be payable monthly in advance, in equal and consecutive instalments of one-twelfth of the Fee each, provided, however, that, unless otherwise provided in any Project Schedule, no payment shall be due and payable by Developer to Programmer *in re*spect of any portion of the Equipment until Developer has taken possession of such portion of the licenced Property.

e. The Inflation Factor for any year is 1.0 plus the change, expressed as a decimal fraction, in the Inflation Index between the month of January in that year and the month of [DATE] year earlier. The Inflation Index as of a date is the Inflation Index applicable to the end of the month (or the shortest other such reporting period for the Inflation Index if the Inflation Index is not published *in re*spect of a monthly reporting period) during which such date occurs.

f. Any exigible [FEDERAL/PROVINCIAL]taxes will be added to and be additional to the Fee.

**5. OWNERSHIP AND RESPONSIBILITIES**

1. For the purpose of this licence Agreement only, Developer shall be deemed to be the sole owner of the Equipment and Associated Equipment and Hardware and shall be solely responsible for the installation, construction, operation, maintenance, modification, repair, addition to, reinstallation, relocation, removal and replacement thereof. Except for the responsibilities and undertakings expressly mentioned in this licence Agreement, Programmer shall not be involved in any manner in the above-mentioned activities and in no event shall it be responsible for any such activities.

b. Developer, at its sole cost and expense, will furnish all materials, parts, components, equipment and hardware necessary to construct, install, operate, maintain, modify, repair, add-to, re-install, replace, relocate and remove the Project or any part thereof in accordance with the design approved by Programmer in accordance with Section 7 hereof and any specifications required by this licence Agreement. Any such work shall be performed in accordance with telecommunications industry standards (if any) and in conformity with all applicable statutes, the law, ordinances, regulations, rules, codes, orders or specifications of any public body or authority having jurisdiction thereon (all of which shall have precedence over the specifications set forth in this licence Agreement or over instructions which may be given from time to time by Programmer except where such specifications or instructions result from a requirement of law and so as to not interfere with the operations of Programmer.

**6. CONFORMITY**

Developer shall ensure that the Equipment utilising the Programmer Property shall be suitable in every respect for the purposes for which it is intended and shall be installed in accordance with the plans and specifications submitted by Developer and approved by Programmer pursuant to Section 8 below and maintained in a manner satisfactory to Programmer, and the construction and installation of same shall be in accordance with all applicable requirements and orders of the parties or its successors, including without limitation the [COUTRY] laws, as applicable, or of any other authority having jurisdiction thereon, in all cases at the sole expense of Developer and shall be constructed and maintained so as not to interfere with the activities or business of Programmer.

**7. CONSTRUCTION PHASE**

Developer shall furnish to Programmer for its approval, which approval shall not be unreasonably withheld or delayed, a proposed schedule of construction together with a detailed method of installation of the Equipment and the locations of proposed Associated Equipment and Hardware on the Programmer Property, which Associated Equipment and Hardware shall not interfere with the operations of Programmer.

The proposed schedule shall be furnished by Developer at least [NUMBER] ([NUMBER]) days prior to the Project Commencement Date, and shall be an indication of proposed construction and installation of the Project for purposes of enabling Programmer to coordinate the movement of its operating and maintenance personnel. Developer shall schedule installation and construction in order to avoid disruption of Programmer’s operations. Programmer’s approval of the proposed schedule shall be obtained before any construction or installation work is commenced. Programmer shall use its best efforts to grant such approval within [NUMBER] ([NUMBER]) days from the submission of the proposed schedule for construction. Said approval shall be in the form of a letter signed by Programmer.

Within [NUMBER] ([NUMBER]) months after completion of the construction of the Project, Developer shall furnish Programmer with “as built” construction plans which accurately reflect the completed Project. Developer shall also furnish Programmer with copies of any surveys of the Project.

Review and approval of the schedule of construction, method of installation, “as built” construction plans, and any other documents submitted by Developer to Programmer shall not relieve Developer of any of its obligations under this licence Agreement. Developer assumes the risk that the licenced Premises may not be suitable for the Equipment and Associated Equipment and Hardware.

The provisions of this Section 7 shall apply *mutatis mutandis* to any and all construction, installation, operation, addition to, reinstallation, replacement, relocation or removal or any other work with respect to the Project, but shall not apply to regular inspection, maintenance or repair of the Equipment, which shall be subject to Section 9 hereof.

**8. VEGETATION CONTROL** \**USE ONLY IF THE PROPOSED EQUIPMENT PLACEMENT MAY HAVE AN ADVERSE EFFECT ON THE VEGETATION IN PROPOSED LOCATION\**

For the purposes of this Article, “disturbance” means any activity that physically, chemically or biologically alters or removes vegetation and its associated physical, chemical and biological components, such as resulting in soil exposure, soil compaction and soil erosion or changes in species composition.

During the year in which the Equipment is installed, an approved vegetation control product to inhibit the growth of undesired weeds on the Programmer Property will need to be applied as a result of the disturbance caused to the soil by the installation process, or the weeds will have to be removed. The products and its methods of application, or the removal of the weeds and the method of doing so, as the case may be, shall be selected and carried out by Programmer, conforming with its policy in the matter, and shall be reimbursed by Developer to Programmer.

Developer shall prevent and remediate any disturbance on the Programmer Property:

a. by minimising the creation of bare ground areas; and

b. by providing ground surface shape and grade which will allow effective and economic mowing of the Programmer Property;

c. by establishing a suitable vegetation cover on disturbed portions of the Programmer Property to Programmer’s reasonable satisfaction.

**9. COST AND EXPENSES**

Developer shall reimburse Programmer for any cost or expense incurred by Programmer as a result of the construction, installation and ongoing operation and maintenance of the Project within [NUMBER] ([NUMBER]) days of receipt of Programmer’s invoice therefor together with supporting documentation. Without limiting the generality of the foregoing, Developer shall reimburse Programmer for any cost or expense incurred for, escorting personnel on the Programmer Property during the construction phase as well as the cost of the Project Coordinator and his assistants but excluding head office supervision, at Programmer’s Actual Cost thereof. Any outstanding amount owed to Programmer shall bear interest at the annual rate charged by the parties to its prime commercial borrowers plus [PERCENTAGE %] ([PERCENTAGE %]) from the date that any such amounts become due until payment thereof. The provisions of this Article shall apply *mutatis mutandis* to any and all construction, installation, operation, maintenance, repair, addition to, reinstallation, replacement, relocation or removal or any other work with respect to the Project.

**10. INSTALLATION**

To the extent not prevented by provincial or local laws, regulations and orders, the installation must be approved by Programmer, which approval shall not be unreasonably withheld or delayed. Installation crossing over or under other existing pipes or lines shall be located and installed in accordance with local conditions, provincial or local [YOUR SOUTH AFRICA LAW] and regulations, order of public authority, at the direction of Programmer and such requirements as may be stipulated by any public utility or other line owner, the details of which Developer shall be solely responsible to obtain. If, in the conduct of such work, any change or alteration in pipelines, sewers, drains, conduits, fences, power signals or communication lines or other utility or Programmer's facilities or other installation are necessary, either temporarily or permanently, the cost and expense of such change shall be borne entirely by Developer.

All public notice boards and markers and the location of same must be approved by Programmer, which approval shall not be unreasonably withheld or delayed. Developer shall ensure that such markers are placed at reasonable intervals and maintained as required, provided that no marker that, in the sole opinion of Programmer may become or is deemed to be a hazard shall be installed.

**11. PROPERTY PROTECTION**

If, during the period of inspection, survey, design, construction, installation, operation, maintenance, repair, addition to, reinstallation, replacement, relocation or removal of the Project or any part thereof, Programmer deems it necessary to place watchmen, flagmen, inspectors or supervisors for the protection of the property and undertaking of Programmer, Developer shall reimburse Programmer for the cost and expense of doing so, based upon the Actual Cost incurred by Programmer.

**12. ENTRY NOTICE**

Developer and its agents and contractors shall have the right to enter upon Programmer’s property to survey, design, inspect, construct, maintain, add to, repair, replace, relocate or remove any part or portion of the Project or for any other reason related to the Project. Except for emergency situations, Developer shall give [NUMBER] ([NUMBER]) days’ prior notice to Programmer at the address most recently known to Developer. Should the situation require that Developer excavate within or otherwise alter or disturb the Programmer Property or other land, such notice shall include (as applicable) copies of drawings showing the plan, elevation, details and method of the proposed construction, repair, replacement or any work. Methods and timing of all such works shall be subject to the approval of Programmer which approval shall not be unreasonably withheld or delayed. In emergency situations, Developer shall notify Programmer’s Field Support Specialist orally and by facsimile transmission and then may enter Programmer’s property immediately after having received oral permission to do so from Programmer. Programmer shall have the right to change the designation of the person to be consulted in emergency situations by written notice to Developer.

**13. RELOCATION OR REMOVAL OF PROJECT**

If, at any time, it becomes necessary to relocate, remove, replace or change, even temporarily, the location of the Project or any part thereof, whether for the purposes of Developer or Programmer, or any other authority having jurisdiction, to make changes in structures or facilities as would, in Programmer’s opinion, necessitate the moving and relocating of all or any part of the Project, Developer shall, at Developer’s cost and expense and subject to notice from Programmer as herein provided if the change is initiated by or through Programmer, relocate, remove, replace or change the location of or provide alternate means of support for the Project or such part thereof, within the time period specified in the said notice when applicable.

Programmer will Endeavour to give Developer at least [NUMBER] ([NUMBER]) years prior notice of any relocation, removal, replacement or change initiated by or through Programmer. Where the circumstances do not permit the giving of such advance notice, Programmer may give such shorter notice as it deems reasonably expedient.

Should Developer fail to remove, replace or relocate the relevant portion of the Project after receipt of such notice from Programmer, Programmer shall be entitled to effect the necessary removal, replacement or relocation and to be paid all costs or expenses incurred by Programmer in order to do so within [NUMBER] ([NUMBER]) days of receipt by Developer of a written statement of Programmer’s Actual Cost therefor.

Programmer shall use its best efforts to apprise third parties who have a right to be on the licenced Premises and whom Programmer may reasonably believe will negatively impact the physical integrity of the Equipment, Associated Equipment or Hardware, of Developer's presence along the licenced Premises, shall provide such third parties with Developer's personal contacts so that they may enter into direct contact with each other, and make such arrangements as Developer and such third party may deem appropriate, including such matters as compensation for Developer's costs and expenses resulting from any relocation, removal, replacement or change in the location of its Equipment.

14. RESTRUCTURING, DISCONTINUANCE, ABANDONMENT, MODIFICATION, OR SALE OF PROPERTY

Nothing in this licence Agreement shall affect Programmer's right to carry on its business and dispose of its assets in the normal course of its business, including without limitation the right to alter, reconfigure, relocate or remove property or other Hardware which may be housing or supporting the Equipment. Programmer shall Endeavour to give Developer as much advance notice as possible, and the parties shall reasonably cooperate to find a mutually satisfactory way of enabling the continued presence of the Equipment on Programmer Property to the fullest extent possible. Developer shall be responsible for the costs and expense of relocating the Equipment in such instances and/or providing alternate means of support; provided, however, that Developer may recover its costs and expenses as aforesaid from any other entity or third party if the relocation is made to accommodate such utility or telecommunications entity or any other third party, other than an authority having jurisdiction, but without any guarantee of success by Programmer.

Programmer shall have the right to assign this licence Agreement and all of the Programmer's rights and obligations herein to an Affiliate or successor company, partnership or joint venture in the context of any reorganisation or in the context of the sale of all or substantially all of its operations within a given territory, and no consent shall be required from Developer in such circumstances, provided that the assignee has expressly agreed to be bound by all the terms and conditions of this licence Agreement and has assumed all of the Programmer's obligations hereunder, and that Programmer gives due notice of such assignment to Developer.

Programmer shall also have the right to sell or otherwise dispose of all or any portion of the Programmer Property without obtaining the consent of, but upon giving notice to, Developer if Programmer retains an easement and/or superficiary rights to protect the rights granted to Developer under this licence Agreement and makes such sale subject to such easement and/or superficiary rights. In such cases, Programmer shall also have the option to assign all or part of this licence Agreement to the acquirer, provided that the assignee assumes all of the Programmer's obligations thereunder.

Should Programmer otherwise wish to sell or otherwise dispose of all or any portion of the Programmer Property in or upon which the Equipment is located, Programmer shall require that any such sale or disposition be subject to all existing rights of Developer under this licence Agreement with respect to such licenced Premises or portion thereof, and that the acquirer enter into a separate assumption agreement with Developer covenanting to be bound by all Programmer’s undertakings and obligations contained in this licence Agreement, except as may otherwise be restricted or prohibited by any applicable legislation in force at the time.

Should Programmer discontinue or abandon its operations over the licenced Premises or any portion of such licenced Premises, Programmer shall give notice thereof to Developer and shall one hundred and [NUMBER] ([NUMBER]) days after such notice be relieved from any obligation for maintenance of the land or any structure or material whatsoever located thereon.

Developer acknowledges that, as a result of the discontinuance or abandonment of operations over all or a portion, Programmer may be required to transfer the ownership of the Programmer Property or any portion thereof in or upon which the Equipment is located as a result of a reversion clause or any similar clause contained in its deed of acquisition or its title to the property or may be required to transfer the ownership to the federal or a provincial, municipal or district government pursuant to statutory or regulatory requirements. In such cases, Developer shall have no recourse against Programmer.

Any relocation of the Project contemplated by this Section 14 shall be effected in accordance with the provisions of Section 13.

**15. ABANDONMENT OR DISCONTINUANCE OF THE PROJECT**

If at any time Developer intends to or does abandon the use of the Project, Developer shall so notify Programmer as soon as possible but in no event later than [NUMBER] ([NUMBER]) days from the date of discontinuance, in which case Programmer will have a first option to purchase the Project in its then condition at a price to be agreed upon within [NUMBER] ([NUMBER]) days from the date of Developer’s said notice to Programmer. Should Programmer decide not to purchase the Project or should the parties fail to agree on the sale price of the Project within said [NUMBER] ([NUMBER]) day period, then Developer shall have a further period of one hundred and [NUMBER] ([NUMBER]) days to sell the Project to a third party in accordance with the provisions of Section 20 hereof, provided that the sale price is not lower than the last price at which Developer offered to sell the Project to Programmer. If Developer succeeds in selling the Project to a third party, Programmer shall negotiate a new licence in good faith with such third party purchaser on such terms and conditions as shall be agreed between them.

If Developer does not succeed in selling the Project to a third party within the aforesaid [NUMBER] ([NUMBER]) day period, then Developer shall, within a further period of [NUMBER] ([NUMBER]) days and at its own cost, risk and expense, remove the Project from the Programmer Property and restore the property to the condition existing prior to the construction of the Project and shall make good any damage caused to the Programmer Property and/or any other property of or used by Programmer by such removal. Alternatively, at the sole discretion of Programmer, Developer may abandon any buried equipment in place, in which case same will become Programmer’s unencumbered property, but Developer shall rema*in re*sponsible for any damages or costs whatsoever that may be caused to or suffered by Programmer by such buried equipment and Developer shall indemnify and hold harmless Programmer from and against any Claim of any nature resulting from the abandonment of any buried equipment, except that Developer shall have no such responsibility for damage by Programmer and Developer shall have no obligation to indemnify and hold harmless Programmer as aforesaid from and following such time as Programmer commences to use the abandoned equipment in whole or in part. Except for any Environmental Contamination resulting from the presence of any buried equipment, Developer’s responsibility and obligation to indemnify and hold harmless Programmer as aforementioned is limited to a period of [NUMBER] ([NUMBER]) years after the abandonment of any such buried equipment.

The provisions of Article 15 apply *mutatis mutandis* to any damages or costs resulting from such abandonment. Upon the purchase of the Project or abandonment of the Project as aforesaid, the licence applicable to such Project shall terminate and the Fee payable hereunder with respect to such Project shall thereupon cease.

In the event of discontinuance of the Project as aforesaid, Programmer shall have the right to require Developer, at Developer’s expense and regardless of the disposition of the buried equipment, to forthwith remove any and all Hardware and Associated Equipment from Programmer Property or, upon failure of Developer to do so within a reasonable time, Programmer shall have the right to remove or cause to be removed such Hardware and Associated Equipment from Programmer Property at Developer’s cost, risk and expense.

**16. TERMINATION**

Upon the termination of the licence applicable to the Project other than due to a default by Programmer, Programmer will have a first option to purchase the Project in its then condition at a price to be agreed upon within [NUMBER] ([NUMBER]) days from the date of termination of the License. Should Programmer decide not to purchase the Project or should the parties fail to agree on the sale price of the Project within said [NUMBER] ([NUMBER]) day period, then Developer shall have a further period of [NUMBER] ([NUMBER]) days to sell the Project to a third party, provided that the sale price is not lower than the last price at which Developer offered to sell the Project to Programmer. If Developer succeeds in selling the Project to a third party, Programmer shall negotiate a new licence in good faith with such third party purchaser on such terms and conditions as shall be agreed between them.

If Developer does not succeed in selling the Project to a third party within the aforesaid [NUMBER] ([NUMBER]) day period, then Developer shall, within a further delay of [NUMBER] ([NUMBER]) days and at its own cost, risk and expense, remove the Project from the Programmer Property and shall restore the Programmer Property to the condition existing prior to the construction of the Project and shall make good any damage caused to the Programmer Property and/or any other property of or used by Programmer by such removal.

Alternatively, at the sole discretion of Programmer, Developer may abandon any buried equipment in place, in which case same will become Programmer’s unencumbered property, but Developer shall rema*in re*sponsible for any damages or costs whatsoever that may be caused to or suffered by Programmer by such buried equipment and Developer shall and will, indemnify and hold harmless Programmer from and against any Claim of any nature resulting from the abandonment of any buried cable or buried equipment, except that Developer shall have no such responsibility for damage by Programmer and Developer shall have no obligation to indemnify and hold harmless Programmer as aforesaid from and following such time as Programmer commences to use the abandoned equipment in whole or in part. Except for any Environmental Contamination resulting from the presence of any buried cable or buried equipment, the responsibility and obligation to indemnify and hold harmless Programmer as aforementioned is limited to a period of [NUMBER] ([NUMBER]) years after the abandonment of any such buried equipment. The provisions of Article 16 apply *mutatis mutandis* to any damages or costs resulting from such abandonment. Upon the purchase of the Project or abandonment of the Project as aforesaid, the licence applicable to such Project shall terminate and the Fee payable hereunder with respect to such Project shall thereupon cease.

If the termination of this licence Agreement results from an event of default as defined in Section 23 hereof, then Programmer, upon termination, shall, at its option, either become the owner of the Project without compensation to Developer or require Developer to remove the Hardware and Associated Equipment at Developer’s own cost, risk and expense, from Programmer Property and Developer shall then restore Programmer Property to the condition existing prior to the construction of the Project and shall make good any damage caused to the Programmer Property by such removal.

**17. DAMAGES**

Any damage done to the track, the ballast or to the Programmer Property by the construction, installation, operation, maintenance, repairs, reinstallation, replacement, relocation and removal of the Project or any part thereof, or any other work by or on behalf of Developer, shall be repaired by Programmer and, except where the event giving rise to such repair is caused by any act, omission or negligence of Programmer, its employees, agents or contractors, shall be at the sole expense of Developer, who shall reimburse Programmer for such expenses within [NUMBER] ([NUMBER]) days after receipt by Developer of a written statement of such expenses.

**18. INDEMNIFICATION AND WAIVER**

a. Developer will make no Claim against Programmer or any of Programmer’s employees, representatives or agents, for anything suffered or sustained by Developer or Developer’s employees, representatives, agents or invitees, or by any other person or company, which is based upon, arises out of or is connected directly or indirectly with the licence hereunder or anything done hereunder or anything not done as required hereunder, or relating to Developer’s entry upon the Programmer Property or any other entry permitted hereunder or in any manner relating to the existence of the Project on the Programmer Property, and hereby waives as against Programmer, Programmer’s employees, representatives and agents, all such Claims.

b. Developer will indemnify and save harmless Programmer from and against any and all Claims, by whomsoever made, brought or prosecuted, and from and against any and all loss, damages or expenses suffered or incurred by Programmer, Programmer’s employees, representatives or agents, and which are based upon, arise out of or are connected directly or indirectly with the licence hereunder or anything done hereunder or anything not done as required hereunder, or relating to Developer’s entry upon the Programmer Property or any other entry permitted hereunder or in any manner relating to the existence of the Project on the Programmer Property, including, without limitation, any third party Claims and any Claim arising from Environmental Contamination in connection with the Programmer Property or property adjacent thereto, as well as any Claims arising out of or pertaining to losses or damages sustained by third parties by reason of the relocation of the Project or otherwise.

c. The waiver and indemnity given in the two preceding sub-sections shall not apply to the extent prohibited by law or to the extent that the said Claim is caused or contributed to by the negligence or wrongful acts of Programmer or its employees, representatives or agents.

d. Except in case of gross negligence, where Developer under any provision of this licence Agreement or at law is liable to Programmer, such liability, notwithstanding any other provision of this licence Agreement, shall be restricted to direct losses, damages and liabilities incurred by Programmer, and Developer shall not be required to compensate Programmer for indirect or consequential damages, such as, but not limited to, loss of revenue or profit nor for loss of revenue or profit should same be considered or qualified as direct losses, damages, or liabilities.

e. In the event of the occurrence of any event that Programmer asserts is an indemnifiable event pursuant to this Section, Programmer, as the indemnified party, shall notify Developer, promptly. If such event involves the Claim of any third party and Developer confirms in writing its responsibility, therefore, Developer shall have sole control over, and shall assume all expense with respect to, the defence, settlement, adjustment or compromise of such claim; provided, however, that:

i. Programmer shall have the right to participate in defence of such Claim and to employ counsel at its own expense to assist in the handling of such Claim;

ii. Developer shall obtain the prior written approval of Programmer, which shall not be unreasonably withheld or delayed, before entering into any settlement, adjustment or compromise of such Claim, if pursuant to or as a result of such settlement, adjustment, compromise or cessation, injunctive or other relief would be imposed against Programmer;

iii. Developer shall not be entitled to control (but shall be entitled to participate at its own expense in the defence of), and Programmer shall be entitled to have sole control over, the defence or settlement of any Claim to the extent the Claim seeks an injunction or other equitable relief against Programmer which, if successful, could materially adversely affect the business, operations, assets, condition (financial or otherwise) or prospects of Programmer.

If Developer does not assume sole control over the defence, settlement, adjustment or compromise of such Claim as provided in this Section, Programmer shall have the right to defend, settle, adjust and compromise the Claim in such manner as it may deem appropriate at the cost and expense of Developer, and Developer shall promptly reimburse Programmer therefore in accordance with this Section.

The obligations of both parties set out in this Section 18 shall continue to be enforceable notwithstanding the termination of this licence Agreement.

**19. REPRESENTATIONS AND WARRANTIES**

a. Programmer represents and warrants to Developer as follows:

i. this licence Agreement has been duly authorised, executed and delivered by Programmer and constitutes a valid, binding and legally enforceable agreement of Programmer; and

ii. the execution and delivery of this licence Agreement and the performance of the covenants and agreements herein contained are not limited or restricted by and are not in conflict with any contract, agreement or other instrument to which Programmer is bound.

b. Developer represents and warrants to Programmer as follows:

i. this licence Agreement has been duly authorised, executed and delivered by Developer and constitutes a valid, binding and legally enforceable agreement of Developer;

ii. The execution and delivery of this licence Agreement and the performance of the covenants and agreements herein contained are not limited or restricted by and are not in conflict with any contract, agreement or other instruments to which Developer is bound;

iii. its acquisition of the rights provided for hereunder and the installation of the Equipment are, to the best of its knowledge, in compliance with all applicable laws of Canada, including any regulation promulgated or enforced by any regulatory body which directly regulates Equipment and communications systems; and

iv. The rights conveyed to Programmer in the use of the Equipment are capable of being exercised under all currently applicable laws and regulations without further action, and any burden of complying with any such legal requirements shall be at Developer's expense.

c. The parties hereby agree and acknowledge that the Programmer makes no representation or warranty as to title, and that:

i. The licence granted hereunder is limited to whatever rights, title and interest Programmer has in the licenced Premises. Subject to the foregoing, Programmer undertakes to defend such rights, title and interest in good faith against any contestation before the courts of first instance only, provided that where such defence is for the sole benefit of Developer (including without limitation the protection or preservation of its rights hereunder or therein), such defence shall be at Developer's cost and expense;

ii. Developer agrees to exercise its rights under this licence Agreement in a manner which does not interfere with existing prior rights of third parties who may be occupying or using any part of the licenced Premises;

iii. Programmer shall have no liability or obligation to Developer (including without limitation any liability or obligation to refund any payment paid to Programmer by Developer pursuant to this licence Agreement) because of any dispossession of, ejectment from, or ouster of Developer from any portion of the licenced Premises or because of any failure of, defect in, or extinction of Programmer’s right, title or interest in and to the licenced Premises or any part thereof;

iv. Programmer shall use its best efforts to disclose to Developer all information reasonably necessary for Developer to design and construct the Equipment so that disruption of prior rights of third parties is minimised;

v. Developer shall not by reason of the present licence acquire or assert any right, title or interest in or claim to the licenced Premises which is adverse or superior to the right, title and interest of Programmer (or its successors or assigns) or to the right, title or interest of any third party therein, and Developer’s rights under this licence Agreement shall be subordinate to any mortgage, deed of trust, lien, hypothec or similar encumbrance on or in the licenced Premises or any portion thereof which has been granted or which may hereafter be granted by Programmer; and

vi. Upon the abandonment or termination of the use authorised pursuant to this licence Agreement, title to the licenced Premises shall be free and clear of all rights or claims of Developer and its successors and assigns.

d. The representations and warranties set forth above shall continue in full force and effect during the term of this licence Agreement.

e. Each party shall indemnify and save harmless the other of, from and against any losses, damage and costs (including legal costs) which the other may suffer or incur by reason of a breach by the indemnifying party of its representations and warranties set out above.

**20. ASSIGNMENT**

Programmer may assign this licence Agreement only in accordance with the provisions of Section 14 hereof. Neither this licence Agreement nor the permission hereby granted shall be assigned or sub-licensed by Developer without the prior written consent of Programmer, which consent shall not be unreasonably withheld or delayed. Without limiting or restricting, in any manner whatsoever, Programmer’s right to refuse the said consent on other reasonable grounds, it is expressly understood and agreed that the refusal by Programmer to grant such consent shall be deemed reasonable where the financial standing, reputation, business experience or type and quality of business of the proposed assignee or sub-Developer is not satisfactory to Programmer. Subject to the foregoing, this licence Agreement shall extend to, be binding upon, and enure to the benefit of the parties hereto and their respective successors, assigns and sub-Developers.

Notwithstanding the foregoing, Developer may assign this licence Agreement and all of Developer’s rights and obligations herein to an Affiliate or successor company, partnership or joint venture in the context of any reorganization, and no consent shall be required from Programmer in such circumstances, provided that there is no change of control, that the assignee has expressly agreed to be bound by all the terms and conditions of this licence Agreement and has assumed all of Developer’s obligations hereunder, and that Developer gives due notice of such assignment to Programmer.

**21. PERMITS**

Developer, at its sole cost and expense, shall secure and maintain in effect all federal, provincial, municipal and local permits and licences required for the construction, installation, operation, maintenance, repair, reinstallation, replacement, relocation and removal, as the case may be, of the Project, including, without limitation, zoning, building, health, environmental or communication permits or licenses, and shall indemnify Programmer against payment of the cost thereof and against any fines and penalty that may be levied for failure to procure or to comply with such permits or licences as well as any remedial cost to cure violations thereof. Developer shall continue to comply with all applicable law of [SOUTH AFRICA], including any regulation promulgated or enforced by any regulatory body which directly regulates copper cable systems and communications systems throughout the Term hereof.

**22. TAXES**

Developer agrees that, if it is determined by any federal, provincial, municipal or local governmental authority that the erection, use or existence of the Project, or the sale, acquisition, license, authorisation, transfer (except to Programmer) and disposition of any part or portion of the Project, or rights herein described require the payment of any tax (including sales, real property, personal property, business tax, under any statute, law, ordinances, regulations, rules, codes, orders, but excluding any tax on or calculated with respect to the net income or the capital of Programmer), Developer shall pay the same, plus any penalty or interest thereon, directly to said taxing authority and shall hold Programmer harmless therefrom, as well as indemnify Programmer for and hold Programmer harmless from all costs of defence of any such tax Claim.

Developer shall either pay directly to the taxing authority or reimburse to Programmer, as appropriate under the circumstances, all taxes levied or assessed upon Programmer lands solely due to Developer's occupation or use thereof, its use or erection of the Project or on account of its existence or use, and shall indemnify and hold harmless Programmer with respect to the payment thereof. Developer shall have the right to make claims and Programmer shall cooperate with Developer in the prosecution of such claims for refund, rebate, reduction or abatement of any such taxes. Any services provided by Programmer to Developer in the prosecution of such claims shall be charged to Developer at rates to be mutually agreed upon. Programmer shall pay all taxes levied or assessed upon the Programmer Property other than those which are the responsibility of Developer hereunder, and in the event the Programmer Property becomes the subject of a tax notice or tax sale proceeding, Developer may, after giving Programmer [NUMBER] ([NUMBER]) days' prior written notice, pay such taxes and Programmer shall indemnify Developer for such payment.

The parties acknowledge that the amounts due hereunder have been calculated without including an amount for value-added, goods and services or similar taxes which may be imposed on such amounts. In addition to the amounts due to Programmer under this licence Agreement, Developer shall pay to Programmer any value added, goods and services or similar tax which may be imposed on such amounts pursuant to any federal, provincial or municipal legislation which is or may be enacted.

Developer acknowledges and agrees that it is solely responsible for reporting the installation of the Equipment and Associated Equipment and Hardware and the costs thereof to the appropriate assessment or taxing authorities. Developer acknowledges and agrees that, if and when required by [YOUR SOUTH AFRICA LAW] to do so, Programmer may inform the appropriate assessment or taxing authorities of the presence of the Equipment and Associated Equipment and Hardware upon, along, in, under or over the Programmer Property, and that such assessment or taxing authorities may as a result thereof - or otherwise - create separate assessment, taxation folio(s), roll number(s), as the case may be, for the Equipment and Associated Equipment and Hardware. In such a situation, Developer will not dispute Programmer’s authority to so inform the assessment or taxing authorities nor the creation of any such separate assessment, taxation, folio(s) or roll number(s) unless Developer is prepared to undertake such dispute at its sole cost and risk and indemnify Programmer from and against any increase in the taxes that would have been otherwise payable by Programmer had Developer not disputed such assessment, etc.

**23. DEFAULT**

An event of default shall occur under this licence Agreement when Developer breaches or fails to perform or comply with any covenant, provision or agreement hereunder. No default under this Article [NUMBER] shall be deemed to have occurred unless written notice thereof setting forth the facts of such default has been given to Developer and Developer has not, within [NUMBER] ([NUMBER]) days thereafter, cured or caused to be cured such default. In case of emergency, the aforementioned notice may be given orally, and a default is deemed to have occurred if Developer has not cured or caused to be cured such default within [NUMBER] ([NUMBER]) hours thereafter. For the purposes hereof, an “emergency” shall mean and include any situation which, in Programmer’s reasonable opinion at the time it makes the determination, causes an immediate and serious threat to the Programmer Property, the safety of its employees or agents, or the normal pursuit of its operations. When an event of default occurs, Programmer may:

a. perform the obligation of Developer (including the payment of any monies due or owing by Developer) and, in such event, Developer shall, within [NUMBER] ([NUMBER]) days of a demand therefor by Programmer, repay all amounts so expended by Programmer in complying with such obligation together with interest thereon at the annual rate charged by the [COMPANY NAME] to its prime commercial borrowers plus [PERCENTAGE %] percent ([PERCENTAGE %]) from the date that any such amounts are incurred by Programmer until the date when paid, or;

b. in the event such default is material, in addition to the preceding remedy, terminate the licence applicable to the Project subjected to the default, with a delay of [NUMBER] ([NUMBER]) days following the giving of notice to Developer of its intention to terminate such licence unless Developer shall, before the expiry of said [NUMBER] ([NUMBER]) day delay, take *bona fide* steps to remedy the default which has given rise to the right to terminate the licence applicable to the Project subjected to the default.

Where the default is of such nature that it cannot be reasonably cured within the aforementioned delays, such default shall be deemed to be cured if Developer shall have commenced to cure or caused to be cured such default and such curing of the default shall be proceeded to completion with utmost diligence.

Notwithstanding the foregoing, if the default results from an Event of Force Majeure, Programmer shall not have the right to terminate the licence applicable to the Project, but may pursue any other remedies as may be available to it in law or in equity.

In the event the licence is terminated under this Section, all monies paid by Developer for the payments of such licence will be kept by Programmer as liquidated damages. This liquidated damages clause shall apply *mutatis mutandis* if Developer decides, for any reason whatsoever, to terminate the licence before the expiry of the Term. Such remedy shall be in addition to Programmer’s rights under the project bond referred to in Section 2 hereof.

**24. CONFIDENTIAL INFORMATION**

The parties understand and agree that this licence Agreement and all materials, maps, engineering documents, construction plans and other technical information as may be necessarily exchanged between them in fulfilling the provisions and intent of this licence Agreement, are and shall be confidential. Each party shall, and shall exercise all of its powers so as to ensure that its Affiliates, directors, officers and employees shall keep secret all confidential information of the other party made known to such party and which has been clearly identified in advance as confidential by the owner thereof, including without limitation this licence Agreement, and shall not disclose any such confidential information except as authorised by the respective owner. This obligation shall continue to bind any party after it shall cease to be a party for whatever reason and shall survive termination of this licence Agreement but such obligation of confidentiality shall not apply:

a. to a disclosure to a person who knew the confidential information prior to its being disclosed;

b. to information which comes into the public domain without any breach of the provisions of this Section;

c. to a disclosure of information which is disclosed on a confidential basis to consultants or advisers of a party who have a *bona fide* need to know, including without limitation to assist that party in the carrying out of the terms of this licence Agreement;

d. to a disclosure of information which is disclosed to any governmental authority having jurisdiction over any aspect of the performance of this licence Agreement;

e. to a disclosure of information which is disclosed in compliance with any applicable law or regulation or order or decision of a Court or other authority having jurisdiction;

f. to a disclosure of information which is disclosed in proceedings taken by any party for the enforcement of any of its rights and remedies under this licence Agreement;

g. to a disclosure of information which is disclosed on a confidential basis to any financial institution

with which such party has dealings;

h. to a party which is a successor or an assignee or sub-Developer pursuant to Section 13 or 20 hereof; or

i. to a disclosure of information to a third party contractor or utility relating to the location of the Project in order to prevent damage to or interference with the Project due to work to be carried on in the area of the Project; provided that in making any disclosure pursuant to sub-sections 24(c) through 24(i) above, the disclosing party shall use its best efforts to cause the confidentiality of the disclosed information to be maintained by the recipient thereof.

**25. EXPROPRIATION**

If any portion of the Programmer Property in or upon which the Project is located become the subject of expropriation proceedings, Developer’s interest in the Project shall be severed from Programmer’s interest in such proceedings, and the parties shall seek to have any expropriation award specifically allocated among Developer’s interest and Programmer’s interest. Programmer shall immediately notify Developer of any expropriation action (or threatened action) initiated against the Programmer Property in or upon which the Project is located, of which Programmer is aware, or any proposed sale in lieu of expropriation.

 **26. INSURANCE**

Developer shall acquire and maintain or cause to be acquired and maintained at all times during the term of this licence Agreement a policy of comprehensive general liability insurance, with an inclusive limit of not less than [AMOUNT] R [AMOUNT]) or such other increased amount as Programmer may reasonably require from time to time, insuring Developer against liability arising out of our operations under this licence Agreement, and shall specifically by its wording or by endorsement:

i. Name Programmer as an additional insured;

ii. Provide a cross liability clause;

iii. Extend to insure the liabilities of Developer pursuant to Section 19 hereof; and

iv. Stipulate that the insurer will provide Programmer with [NUMBER] ([NUMBER]) days prior written notice of any material change to or cancellation of the policies of insurance.

The insurance policies contemplated hereby shall be acceptable to Programmer and shall contain an endorsement which provides that Programmer shall be given not less than [NUMBER] ([NUMBER]) days’ written notice in advance of any cancellation, termination, change or amendments restricting coverage.

Furthermore, Developer shall maintain workers’ compensation insurance which fully meets the requirements of any workers’ compensation law (including any occupational disease (South African Law) or in the [province] thereof in which the Project is located.

Developer shall furnish Programmer with a copy thereof or a certificate of insurance evidencing all the coverage above stipulated. It is further provided and agreed that any insurance coverage acquired hereunder by Developer will in no manner restrict or limit the liabilities assumed by Developer hereunder.

**27. ENVIRONMENT**

Upon the granting of the License, Developer shall be deemed to have acknowledged that it has inspected the applicable Programmer Property and conducted an investigation of current and past uses of such Programmer Property and that Developer has not relied on any representations by Programmer concerning any condition of the Programmer Property, environmental or otherwise. Programmer shall be deemed never to have made any representations or warranties whatsoever regarding the fitness of the Programmer Property for any particular use regarding the presence or absence upon or under such Programmer Property or any surrounding or neighbouring lands of, or the leakage or possible leakage or emission from or onto the Programmer Property of contaminant or any toxic hazardous, dangerous or potentially dangerous substance or condition.

Developer shall be responsible for any Environmental Contamination it causes as a result of the Project and shall indemnify and save harmless Programmer from and against any and all costs, expenses, damages, claims, awards, orders and judgments *in re*spect thereof. The Equipment itself shall not be considered to be a contaminant unless expressly declared to be so by a statutory or regulatory provision or in the exercise of its proper authority or discretion by an authority having jurisdiction.

Developer shall immediately take all measures which Programmer, in its sole discretion, may consider necessary to keep the Programmer Property in an environmentally clean province and clear of all Environmental Contamination resulting from Developer’s occupation or use of the Programmer Property. Developer shall be solely responsible for the cost of all work carried out to correct any Environmental Contamination which occurs on other lands as a result of Developer’s occupation or use of the Programmer Property.

If Developer should fail to correct any Environmental Contamination for which it is responsible pursuant to the terms hereof to the satisfaction of Programmer or of any public authority having jurisdiction, Programmer may charge Developer from time to time for all the costs incurred by Programmer in correcting such Environmental Contamination, plus [PERCENTAGE %] percent ([PERCENTAGE %]) for overhead, and Developer shall pay Programmer’s invoice or invoices for such costs within [NUMBER IN LETTERS] ([NUMBER]) days of receipt of each invoice. In the event such remedial work is carried out by any public authority, the cost of such work shall be borne by Developer.

Developer shall comply with the provisions of any federal or provincial laws and regulations, and to the extent, Developer is subject thereto, of any provincial, county or municipal laws and regulations, concerning the environment. If any public authority having jurisdiction with respect to environmental protection, or fire protection, requires the installation of equipment or apparatus, Developer shall take such measures as may be required by such public authority and shall be solely responsible for the cost of all work carried out to comply with the requirements of a public authority.

Upon termination of the License, Developer shall leave the Programmer Property free of any Environmental Contamination resulting from Developer’s occupation or use of the Programmer Property.

The responsibility of Developer with respect to environmental obligations contained herein shall continue to be enforceable by Programmer notwithstanding the termination of this licence Agreement.

**28. NOTICES**

Except as otherwise provided in this licence Agreement, any demand, notice, invoice, authorisation or other communication to be given to a party in connection with this licence Agreement shall be given in writing and shall be given by personal delivery, by registered mail or by telecopy addressed to the recipient as set forth as follows or to such other address, individual or telecopy number as may be designated by notice given by the party to the others:

if to Developer:

[COMPANY NAME]

[FULL ADDRESS]

Attention: [NAME]

Facsimile: [FAX NUMBER]

if to the Programmer:

Programmer:

[YOUR COMPLETE ADDRESS]

Attention: [NAME]

Facsimile: [YOUR FAX NUMBER]

Any demand, notice, invoice or other communication given by personal delivery shall be conclusively deemed to have been given on the day of actual delivery thereof and, if given by registered mail, on the third business day following the deposit thereof in the mail and, if given by telecopy, on the day of transmittal thereof if given during the normal business hours of the recipient and on the business day during which such normal business hours next occur if not given during such hours on any day. If the party giving any demand, notice or other communication knows or ought reasonably to know of any difficulties with the postal system which might affect the delivery of mail, any such demand, notice or other communication shall not be mailed but shall be given by personal delivery or by telecopy.

**29. GOVERNING LAW; ATTORNMENT**

This licence Agreement shall, *in re*spect of each and every portion of the Equipment, be interpreted and construed in accordance with the laws of the [Province] of South Africa and the laws of South Africa applicable therein and the parties hereby attorn to the non-exclusive jurisdiction of the Courts of the [Province] of South Africa sitting in the City of [CITY].

**30. REGISTRATION**

This licence Agreement shall not be registered by Developer against the title to the Programmer Property or otherwise, and any such registration by Developer shall automatically constitute an event of default hereunder.

**31. DISCHARGE OF LIENS**

Developer covenants and agrees that it shall not create or permit to remain, but will remove and discharge or cause to be removed and to be discharged promptly at its cost and expense any lien, encumbrance, charge, claim of lien, privilege, hypothec or mortgage upon the Programmer Property in or upon which the Project is located, which arises out of the use hereunder by Developer or by reason of labour, material or services furnished or claimed to have been furnished for Developer under this licence Agreement.

**32. GENERAL PROVISIONS**

a. The rights, duties, obligations and liabilities of the parties pursuant to the relationship created pursuant to this licence Agreement shall be limited to those rights, duties, obligations and liabilities set out in this licence Agreement. Nothing herein contained shall be construed to create a partnership or joint venture between the parties. Except as expressly authorised by the terms and conditions hereof, nothing herein contained shall be construed to authorise a party to act as the agent of any other party, or to permit any party to act on behalf of or bind any other party.

b. Each of the parties agrees to execute and deliver all such other additional instruments and documents and to do such other acts and things as may be necessary more fully to effectuate this licence Agreement and the relationship created hereby.

c. The headings used in this licence Agreement are for reference purposes only and do not constitute substantive matter to be considered in construing the terms of this licence Agreement.

d. Any provision in this licence Agreement which is prohibited or unenforceable in whole or in part in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

e. Pursuit by a party of any of the remedies provided for in this licence Agreement shall not preclude pursuit by it of any other remedies provided by law or in equity, nor shall it constitute a forfeiture or waiver of any amount due to it or of any damages accruing by reason of the violation of any terms, provisions and covenants contained in this licence Agreement.

f. No waiver by any party of the performance of any provision, condition or requirement herein shall be deemed to be a waiver of, or in any manner release the other parties from, performance of any other provision, condition or requirement herein; nor deemed to be a waiver of, or in any manner, release the other parties from future performance of the same provision, condition or requirement; nor shall any delay or omission by any party to exercise any right hereunder in any manner impair the exercise of any such right or any like right accruing to it thereafter.

g. Unless otherwise specified herein, all dollar amounts referred to in this licence Agreement are in [CURRENCY] funds.

h. This licence Agreement, including the attachments, constitutes the entire agreement among the parties and there are not and shall not be any verbal statements, representations, warranties, undertakings, or agreements between the parties purporting to vary its terms, and this licence Agreement may not be amended or modified in any respect, except by written instrument signed by the parties hereto.

i. Developer and Programmer will each appoint a senior commercial manager to interface with each other.

j. Both parties have requested and agreed that this licence Agreement and all documents ancillary thereto be drawn up in the English language;

IN WITNESS WHEREOF, each party to this agreement has caused it to be executed at [PLACE OF EXECUTION] on the date indicated above.

# PROGRAMMER DEVELOPER

Authorised Signature Authorised Signature

Print Name and Title Print Name and Title

**SCHEDULE A**

**LOCATION & EQUIPMENT DESCRIPTION**