LICENSEE ORIENTED SOFTWARE LICENCE AGREEMENT

This Licensee Oriented 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 the [State/Province] of [STATE/PROVINCE], with its head office located at:

 [YOUR COMPLETE ADDRESS]

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

 [COMPLETE ADDRESS]

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

1. **LICENCE**
	1. **Software Licence**

The Licensor hereby grants to the Licensee a perpetual, irrevocable, non-exclusive licence (the "Licence") to use the programme supplied hereunder (the "Program") and other materials related thereto (the "Documentation", which collectively with the programme is referred to herein as the "Software"), subject to the terms and conditions hereinafter set forth in this Agreement and the schedules annexed to this Agreement (the "Schedules'').

* 1. **Licence Fee and Payment**

As consideration for the Licence, the Licensee will pay the Licensor the amounts outlined in Schedule A annexed hereto under the terms stated therein.

1. **LICENCED SOFTWARE**
	1. **The Program**

The programme will consist of the modules or components, will perform the functions and will comply with the proposals and specifications identified or set forth on Schedule B annexed hereto. The Licensor is required to deliver to the Licensee the number of copies of the programme specified in Schedule B, which shall be saved on machine-readable media which can be read by the hardware on which the programme is to be run (the "Hardware"), as specified in Schedule C annexed hereto. The Licensee will have the right, as part of the Licence granted herein, to make as many additional copies of the programme as it may deem necessary.

* 1. **Documentation**

The Documentation will consist of any and all operator's and user's manuals, training materials, guides, commentary, listings and other materials for use in conjunction with the Program, as set forth in Schedule B. The Licensor is required to deliver to the Licensee the number of copies of said Documentation as specified in Schedule B. The Licensee will have the right, as part of the Licence granted herein, to make as many additional copies of the Documentation as it may deem necessary.

* 1. **Source Code**

The programme is deemed to include: its source code form; a compiler, or similar computer programme which can convert the source code into the object code form of the programme and the Documentation is deemed to include all relevant commentary, including explanation, flow charts, algorithm and sub-routine descriptions, memory and overlay maps and other documentation of the source code ("Commentary"). The Licensor is required to deliver to the Licensee with the object code, the number of copies of the complete source code and compiler contained on machine-readable media which can be read by the Hardware as is specified in Schedule B, as well as the number of copies of the complete listing of the source code and Commentary as specified in Schedule B. The Licensee will have the right, as part of the Licence, to make as many additional machine-readable or other copies of the source code, the listing thereof and Commentary for its use as it may deem necessary. In the event of the dissolution, bankruptcy or insolvency of the Licensor, the Licensee shall own its copies of the Software.

* 1. **Source Code Escrow**

No later than the time of the Licensor's delivery of the programme and Documentation to the Licensee, as specified below, the Licensor shall place in escrow a fully commented and documented copy of the source code form of the Program, a listing thereof and all relevant Commentary, of said copy of the source code, a listing thereof and Commentary to the Escrow Agent under the Software Deposit Agreement. If the Licensor corrects any defects in or provides any revision to the programme under Section 7.2 hereof, or under any software maintenance agreement, the Licensor shall simultaneously furnish the Escrow Agent with a corrected or revised copy of the source code form of the Program, a revised listing thereof, and revised Commentary.

1. **OPERATING ENVIRONMENT AND MODIFICATIONS**
	1. **Operating Environment**

The Program, and each module or component and function thereof, will be capable of operating fully and correctly on the Hardware and the operating system specified in Schedule C. The computer programming language in which the Program, as delivered, will be written, and any compiler or another computer programme which, in addition to the operating system, must be present in order for the programme to function fully, are also specified in Schedule C. Unless expressly indicated in Schedule C, the addition or connection of other computer equipment to the Hardware will not adversely affect the performance of the Program. The Documentation will in all cases be fully applicable to use of the programme on the Hardware and in conjunction with the operating system or other required programmes set forth in Schedule C, if any, and will identify and reflect any particular features of any of same which may affect the normal use and operation of the Program.

* 1. **Conversion**

The Licensor represents that the programme and Documentation are currently fully operational and being used on the configuration of Hardware and operating system and other required computer programs, if any, specified in Schedule C. After execution of this Agreement, the Licensor shall promptly make any modifications to the Software called for by Schedule D annexed hereto and convert the programme to run on the Hardware and operating system, and the programme shall be written in the computer language specified in Schedule C.

* 1. **Custom Modifications**

The Licensor shall make certain modifications to the Software, before delivery of same to the Licensee, as specified in Schedule D. The programme and Documentation shall be deemed to include all such modifications for all purposes hereunder. The total separate charge for such modifications shall be payable as set forth in Schedule A. In the event the Software as modified hereunder is accepted, then the Licensee shall be deemed the owner of such modifications, and the Licensor shall not distribute the Software with such modifications to any other party unless it first agrees to pay the Licensee a reasonable royalty, pursuant to such other reasonable terms as the parties may agree upon.

1. **DELIVERY AND INSTALLATION**
	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 set forth in Schedule E (the "Site"), the required number of copies of the object code form of the Program, together with the required number of copies of the source code, compiler, Commentary, listings and other Documentation. Upon at least [NUMBER] days notice to the Licensor, the Licensee may, at no cost, postpone the delivery of the Software 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 and all risk of loss, including any insurance costs. If the Licensor fails to make timely delivery of the Software as provided above, then 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. **Program Installation and Acceptance**

The Licensee shall instal the programme on the Hardware as specified in Schedules C and E annexed hereto. The Licensee shall conduct all of its testing procedures on the programme as outlined in Schedule F annexed hereto. The successful completion of the Licensee acceptance testing will be deemed Licensee's acceptance of the Program. In the event that the programme fails to pass any of the Licensee testing procedures, or fails to function properly or in conformity with the description, specifications, and Documentation set forth in Schedule B, then the Licensor will have [NUMBER] days in which to correct such defect and cause the programme to successfully pass all such tests or function as aforesaid, 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. **SCOPE OF USE**
	1. **Site Licence**

The Licensee will use the programme only at the Site identified in Schedule E. Notwithstanding, the Licensee may, at any time, without prior notice to or consent of the Licensor, transfer the programme to any other location of the Licensee, its affiliates or subsidiaries or other entities owned or controlled by the Licensee (collectively, "Licensee"). The licensee shall thereafter promptly give the Licensor notice of such new location.

* 1. **Multiple Use Option**

The Licensee will have the option to extend the Licence to include simultaneous use of the programme at additional Sites (as defined above) within the Licensee Site, which it may exercise in its sole discretion at any time and from time to time by tendering to the Licensor payment pursuant to Schedule E for each additional Site at which the programme will be so used, together with a notice identifying such additional location.

1. **TRAINING**

The Licence Fee outlined in Schedule A shall include all costs for the training of the Licensee's employees on the use and operation of the programme on the Hardware as specified in Schedule G annexed hereto including instruction in any necessary conversion of the Licensee's data for such use.

1. **RIGHTS AND OBLIGATIONS**
	1. **Licensor's Warranties**

The Licensor hereby warrants and represents to the Licensee as follows:

* + 1. **Ownership**: The Licensor is the owner of the Software or otherwise has the right to grant the Licence to the Licensee without violating any rights of any third party, and there is currently no actual or threatened suit by any such third party based on an alleged violation of such right by the Licensor;
		2. **Business Requirements:** The Licensor is fully aware of the Licensee's business requirements and intended uses for the Software, including any outlined in Schedule B, and the Software shall satisfy such requirements in all material respects, is fit for such intended uses and will operate on the Hardware;
		3. **Warranty Period**: For a period of [NUMBER] year from the date of the Licensee's acceptance of the Program, as specified above (the "Warranty Period") and for the term of any Software Maintenance Contract, the programme shall
			1. be free from defects in material and workmanship under normal use and remain in good working order, and
			2. function properly and in conformity with the warranties herein and in accordance with this Agreement and with the description, specifications and Documentation set forth in Schedule B and on the Hardware and system software and other software set forth in Schedules C and E including updates or new releases to such Hardware, system software and other software, and interface with other programmes as required by Schedule B, and the Documentation shall completely and accurately reflect the operation of the Program;
		4. **Response Time**: During the Warranty Period, and for the term of any Software Maintenance Contract, with respect to each online transaction, the Program, in conjunction with the Hardware, shall receive, process and respond in the time frame set forth in Schedule H annexed hereto, measured from the time the transaction is completely keyed into a terminal until the appropriate programme response appears on the terminal;
		5. **Capacity**: During the Warranty Period and for the term of any Software Maintenance Contract, the Program, in conjunction with the Hardware, can maintain, use, update, and otherwise process the number of transactions as outlined in Schedule H, without adversely affecting its response time or other performance;
		6. **Reliability**: During the Warranty Period and for the term of any Software Maintenance Contract, the Program, in conjunction with the Hardware can maintain the uptime or reliability standards outlined in Schedule H;
		7. **Remedies for Breach of Software Warranties:** In the event that the programme does not meet the above warranties, the Licensor shall provide at no charge during the Warranty Period or the term of any Software Maintenance Contract, the necessary software and services required to attain the levels or standards outlined in said warranties;
		8. **Service and Maintenance**: The Licensor warrants that each of its employees or subcontractors assigned to perform any work hereunder, and under any Software Maintenance Contract, shall have the proper skill, training, and background to be able to perform competently and professionally and that all work will be so performed;
		9. **Service Warranty**: For the Warranty Period and the term of any Software Maintenance Contract, the Licensor warrants that it shall maintain the Software in good working order, keep it free from defects in material and workmanship, and remedy any failure of the Software to perform in accordance with this Agreement, including the warranties set forth herein, the Schedules, or which impairs the Licensee's use thereof, or any other malfunction, defect or non-conformity in the Software, which shall be provided as follows: The Licensor agrees to respond to any request for service due to a failure, malfunction, defect or non conformity by telephone response by a qualified and knowledgeable representative within [NUMBER] hours of receipt of such request and such representative shall render continuous effort, via telecommunications, to remedy the failure, malfunction, defect or non-conformity. If such failure, malfunction, defect or non-conformity cannot be remedied by such means within [NUMBER] hours of receipt of such request, the Licensor shall immediately send at least one qualified and knowledgeable representative to the Licensee's Site and said representative(s) will furnish continuous effort to remedy the failure, malfunction, defect or non-conformity.
	1. **Software Maintenance**
		1. During the Warranty Period and for the term of any Software Maintenance Contract, the Licensor shall promptly notify the Licensee of any defects or malfunctions in the programme or Documentation which it learns from any source. The Licensor shall promptly correct any material defects or malfunctions in the programme or Documentation discovered during such Warranty Period and the term of any Software Maintenance Contract and provide the Licensee with corrected copies of same, without additional charge. The Licensor's obligation hereunder will not be deemed to 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 programme and Documentation revised to reflect any enhancements to the Software made by the Licensor during the Warranty Period and the term of any Software Maintenance Contract. Such enhancements will be deemed to include all modifications to the Software which increase the speed, efficiency or ease of operation of the Software, or add additional capabilities to or otherwise improve the functions of the Software.
	2. **Additional Support**

During the Warranty Period and for the term of any Software Maintenance Contract, 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 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.

* 1. **Software Maintenance Contract and Renewal Option**

After the expiration of the Warranty Period, if the Licensee elects, the Licensor shall provide maintenance, additional support, and enhancements in connection with the Software, under the terms of the Software Maintenance Contract outlined in Schedule I annexed hereto. The initial one-year maintenance fee is as set forth in Schedule A. The Licensor grants to the Licensee the option to renew for [NUMBER] year terms after the initial one-year term, 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 by more than [%]. As part of the Software Maintenance Contract, the Licensor shall make available to the Licensee updates and enhancements to the Software which the Licensor has installed at its other customers' locations. For each update or enhancement, the Licensor warrants and represents that the installation of such update or enhancement shall not give rise to any additional costs and the installation of the update or enhancement shall not adversely affect the Software performance as warranted herein. The Licensee shall have the right to refuse to utilise any such update or enhancement, and such refusal shall not relieve the Licensor of its obligations for support, warranty, and maintenance of the Software. Any additional services during the Warranty Period or the term of any Software Maintenance Contract shall be provided upon the Licensee's request at the Licensor's standard time and materials rates.

* 1. **Licensee Modifications**

The Licensee will have the right, in its discretion, to independently modify the Software for its use, through the services of its employees or of independent contractors, provided that the same agreement not to disclose any part of the Software or otherwise violate the Licensor's proprietary rights. Such modifications, if approved by the Licensor, shall not affect the Licensor's warranty or maintenance obligations hereunder. The Licensee shall be deemed to be the owner of any such modifications which shall be deemed confidential information of the Licensee, provided that the Licensee will not be deemed to have obtained any right thereby to distribute the Program. 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 such reasonable terms as the parties may agree upon.

* 1. **Indemnity**

The Licensor, at its own expense, shall indemnify and hold harmless the Licensee, its subsidiaries, affiliates or assignees, and their directors, officers, employees and agents and defend any action brought against same with respect to any claim, demand, cause of action, debt or liability, including attorneys' fees, to the extent that it is based upon a claim that the Software used hereunder infringes or violates any patents, copyrights, trade secrets, licenses, or other property rights of any third party. The Licensee may, at its own expense, assist in such defence if it so chooses, provided that, as long as the Licensor can demonstrate sufficient financial resources, the Licensor shall control such defence and all negotiations relative to the settlement of any such claim. The Licensee shall promptly provide the Licensor with written notice of any claim which the Licensee believes falls within the scope of this paragraph. In the event that the Software or any portion thereof is held to constitute an infringement, and its use is enjoined, the Licensor shall have the obligation to, at its expense, 7.6.1 modify the infringing Software without impairing in any material respect the functionality or performance, so that it is non-infringing,

7.6.2 procure for the Licensee the right to continue to use the infringing Software, or

7.6.3 replace said Software with equally suitable, non-infringing software. If none of the preceding alternatives are available to the Licensor, the Licensee shall receive repayment of all monies paid to the Licensor, and the Licensor shall accept the return of the Software at its expense, once the Licensee has arranged for the continuation of the functions performed thereby. The Licensor agrees to indemnify the Licensee for any liability or expense due to claims for personal injury or property damage

 7.6.3.1 arising out o the furnishing or performance of the Software or the services provided hereunder or

 7.6.3.2 arising out of the fault or negligence of the Licensor.

1. **CONFIDENTIALITY AND PROPRIETARY RIGHTS**
	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 business information of the other party which it learns during its performance of this Agreement, without the prior written consent of such other party. This obligation will survive the cancellation or other termination of this Agreement.

* 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 the Licensee. This obligation will survive the cancellation or other termination of this Agreement.

* 1. **Licensor's Proprietary Notices**

The Licensee agrees that any copies of the programme or Documentation which it makes pursuant to 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 disclose or distribute same to any third party without the Licensor's prior written consent, which consent shall not be unreasonably withheld. Notwithstanding the preceding sentence, the Licensee may add its copyright or other proprietary notice to any copy of the programme or Documentation which contains modifications to which the Licensee has ownership rights under this Agreement.

1. **MOST FAVOURED CUSTOMER**

Licensor agrees to treat Licensee as its most favoured customer. 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 Licensor to its current customers. If Licensor agrees with any other customer providing such customer with more favourable terms, then this Agreement will be deemed appropriately amended to provide such terms to Licensee. Licensor shall promptly provide Licensee with any refund or credits thereby created.

1. **ASSIGNMENT**

The Licensee may assign this agreement to any subsidiary or affiliate or entity owned or controlled by the Licensee without regard to the jurisdiction of incorporation of said subsidiary, affiliate or entity, 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 be deemed to have all of the rights and obligations of the assigning party outlined in this Agreement. It is understood that no assignment shall release the assigning party from any of its obligations hereunder.

1. **NOTICES**

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

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 the [PROVINCE], and the Licensor consents and agrees that jurisdiction and venue for such proceedings shall lie exclusively with such courts.

1. **SEVERABILITY**

If any provision of this Agreement or any Schedule attached hereto is held invalid or otherwise unenforceable, the enforceability of the remaining provisions of this Agreement and the Schedules will not be impaired thereby.

1. **NO WAIVER**

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

1. **COMPLETE AGREEMENT**

The terms and conditions of the Schedules attached hereto, including any additional terms and conditions outlined in Schedule J annexed hereto, are incorporated into this Agreement by this reference and shall constitute part of this Agreement as if fully set forth herein. In the event of a conflict between the terms of this Agreement and any Schedule, the terms of the Schedule shall control. This Agreement, including the Schedules attached hereto, sets forth the entire understanding of the parties as to the Software described in Schedule A and may not be modified except in writing executed by both parties.

1. **REMEDIES**

The rights and remedies of the Licensee outlined in this Agreement are not exclusive and are in addition to any other rights and remedies available to it in law or equity.

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

Authorised Signature Authorised Signature

Print Name and Title Print Name and Title

**SCHEDULE A**

**FEES AND PAYMENT TERMS**

**SCHEDULE B**

**SOFTWARE DESCRIPTION**

**SCHEDULE C**

**HARDWARE AND OPERATING SYSTEM**

**SCHEDULE D**

**MODIFICATIONS TO SOFTWARE**

**SCHEDULE E**

**THE SITE**

**SCHEDULE F**

**TESTING PROCEDURES**

**SCHEDULE G**

**TRAINING TO EMPLOYEES**

**SCHEDULE H**

**DEVELOPMENT TIMEFRAME**

**SCHEDULE I**

**SOFTWARE MAINTENANCE CONTRACT**