LICENSOR ORIENTED SOFTWARE LICENCE AGREEMENT

This Licensor 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 [COUNTRY], with its head office located at:

 [YOUR COMPLETE ADDRESS]

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

 [COMPLETE ADDRESS]

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

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

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

1. **DEFINITIONS**

When used in this Agreement, the following terms shall have the respective meanings indicated, such meanings to apply to both the singular and plural forms of the terms defined:

**"Acceptance"** of Software means completion of the acceptance testing process outlined in Section 3 of this Agreement.

**"Agreement"** includes this agreement and its Schedules and Riders.

**"Delivery Date"** is the date on which the Licensor ships the Software to the Licensee.

**"Designated Environment"** means the computer equipment and software operating system described on Schedule C.

**"Documentation"** means the user, system and installation documentation for the Software.

**"Error"** means a material failure of the Software to function in conformity with the Specifications.

**"Licence"** means the licence granted by the Licensor to the Licensee to use the Software and Documentation in accordance with the terms and conditions of this Agreement.

**"Licenced Copies"** means the number of copies of the Software and Documentation being licenced to the Licensee.

**"Location(s)"** means Licensee's offices at the location(s) specified in Schedule D.

**"Maintenance Agreement"** means the Software Maintenance Agreement between the parties effective as of the date of this Agreement.

**"Price"** means the Licence Fees the Licensee shall pay as specified in Schedule B.

**"Rider"** refers to any riders attached to this Agreement, or any subsequently prepared document which the parties agree in writing to be considered a Rider.

**"Schedule"** refers to any schedule attached to this Agreement, or any subsequently prepared document which the parties agree in writing to be considered a Schedule.

**"Software"** means the computer programmes specified in Schedule A in machine-readable, object code form, and any computer programmes delivered to the Licensee in machine-readable, object code form as

Maintenance Releases and Product Releases (as these terms are defined in the Maintenance Agreement).

**"Specifications"** means Licensor's current published Product Release Definitions.

**"Target Date"** means the date set forth by which parties anticipate delivery of the Software.

**"Warranty Period"** means [NUMBER] days from the date of Acceptance.

1. **SOFTWARE LICENCE**
	1. **Licence**

The Licensor grants the Licensee a non-exclusive, non-transferable licence to

2.1.1 use the Software and Documentation solely for its internal operations at the Location(s) and on the Designated Environment, and

2.1.2 copy the Software and Documentation for archival or backup purposes only, provided that all titles, trademarks, and copyright, proprietary and restricted rights notices shall be reproduced in all such copies, and that all copies shall be subject to the terms of this Agreement.

* 1. **Distribution**

Except as explicitly provided herein, the Licensee shall not:

2.2.1 make available or distribute all or part of the Software or Documentation to any third party by assignment, sub-licence or by any other means;

2.2.2 copy, adapt, reverse engineer, decompile, disassemble, or modify, in whole or in part, any of the Software or Documentation; or

2.2.3 use the Software to operate in or as a time-sharing, outsourcing, or service bureau environment, or in any way allow third party access to the Software.

1. **INSTALLATION AND ACCEPTANCE**

The Licensor shall use reasonable efforts to deliver the Licenced Copies of the Software and Documentation to the Location(s) on or about the Target Date. The Licensee shall have [NUMBER] days from the Delivery Date to perform acceptance testing. The Licensee's Acceptance of the Software shall occur at the earlier of the Licensee's operational use of the Software, or the expiration of [NUMBER] days from the Delivery Date without the provision of notice by the Licensee to the Licensor of any Error(s). If the Licensee provides notice to the Licensor of any Error(s) and the Licensor verifies the alleged Error(s), the Software shall be accepted upon the Licensor's correction of such Error(s).

1. **PRICE AND PAYMENT**
	1. **Price**

The Licensee shall pay the Price in accordance with the payment plan outlined in Schedule B. The Licensor shall invoice any additional costs reasonably incurred by the Licensor in the delivery of the Software as they are incurred. Payment shall be made by the Licensee to the Licensor in full without any right of set-off or deduction, and the Licensee shall pay the Price and such costs within [NUMBER] days from the date of invoice.

* 1. **Tax**

The Licensee shall be responsible for any applicable sales or use taxes or any value added or similar taxes payable concerning the licencing of the Software, or arising out of or in connection with this Agreement, other than taxes levied or imposed based upon the Licensor's income. If the Licensor pays any such taxes on behalf of the Licensee, the Licensor shall invoice the Licensee for such taxes, and the Licensee agrees to pay such taxes in accordance with this Agreement.

* 1. **Interest**

Failure by the Licensee to pay any amounts invoiced under this Agreement in full in accordance with this Agreement shall make the Licensee liable to pay the Licensor interest at the rate of [%] per month on the remaining amount due, or at the highest amount permitted by applicable law such interest to accrue on a daily basis after as well as before any judgement  relating to collection of the amount due.

1. **PROPRIETARY RIGHTS**

The Licensee acknowledges and agrees that the copyright, patent, trade secret, and all other intellectual property rights of whatever nature in the Software, Documentation and Specifications are and shall remain the property of the Licensor, and nothing in this Agreement should be construed as transferring any aspects of such rights to the Licensee or any third party.

1. **CONFIDENTIALITY**
	1. **Confidential Information**

"Confidential Information", shall mean the Software, Documentation, Specifications, and terms and conditions of this Agreement. The Licensee acknowledges the confidential and proprietary nature of the Confidential Information and agrees that it shall not reveal or disclose any Confidential Information for any purpose to any other person, firm, company or other entity, other than the Licensee's employees with a need to know of such Confidential Information to perform employment responsibilities consistent with the Licensee's rights under this Agreement. The Licensee shall safeguard and protect the Confidential Information from theft, piracy or unauthorised access in a manner at least consistent with the protections the Licensee uses to protect its own most confidential information. The Licensee shall inform its employees of their obligations under this Agreement, and shall take such steps as may be reasonable in the circumstances, or as may be reasonably requested by the Licensor, to prevent any unauthorised disclosure, copying or use of the Confidential Information. The Licensee acknowledges and agrees that in the event of the Licensee's breach of this Agreement, the Licensor will suffer irreparable injuries not compensated by money damages and therefore shall not have an adequate remedy at law. Accordingly, the Licensor shall be entitled to a preliminary and final injunction without the necessity of posting any bond or undertaking in connection therewith to prevent any further breach of these confidentiality obligations or further unauthorised use of Confidential Information. This remedy is separate, and apart from any other remedy, the Licensor may have.

* 1. **Unauthorised Disclosure**

The Licensee shall notify the Licensor immediately upon discovery of any prohibited use or disclosure of the Confidential Information, or any other breach of these confidentiality obligations by the Licensee, and shall fully cooperate with the Licensor to help the Licensor regain possession of the Confidential Information and prevent the further prohibited use or disclosure of the Confidential Information.

1. **WARRANTY**
	1. **Operation**

The Licensor represents to the Licensee that:

7.1.1 during the Warranty Period, the Software shall operate without any Errors; and

7.1.2 upon notification to the Licensor during the Warranty Period of any Errors, the Licensor will, during its normal business hours and at no cost to the Licensee, use reasonable efforts to correct such Errors which are reproducible and verifiable by the Licensor, excluding any Errors caused by uses of the Software which were not in accordance with the Specifications.

* 1. **Connection**

In the event that the Licensee notifies the Licensor of an Error during the Warranty Period, the Licensor's sole liability, and the Licensee's sole remedy, will be the Licensor's use of reasonable efforts to correct such Errors or, in the Licensor's sole discretion, to refund the portion of the prepaid Price applicable to the portion of the Software which is defective.

* 1. **Warranty Disclaimer**

THE WARRANTY OUTLINED IN THIS SECTION 7 IS A LIMITED WARRANTY, AND IT IS THE ONLY WARRANTY MADE BY THE LICENSOR. THE LICENSOR EXPRESSLY DISCLAIMS, AND THE LICENSEE HEREBY EXPRESSLY WAIVES, ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE LICENSOR DOES NOT WARRANT THAT THE SOFTWARE WILL MEET THE LICENSEE'S REQUIREMENTS OR THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ERRORS IN THE SOFTWARE WILL BE CORRECTED. THE LICENSOR'S LIMITED WARRANTY IS INSTEAD OF ALL LIABILITIES OR OBLIGATIONS OF THE LICENSOR FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE INSTALLATION, OR PERFORMANCE OF THE SOFTWARE. THE PARTIES AGREE THAT THE SOFTWARE'S FAILURE TO PERFORM IN ACCORDANCE WITH THE SPECIFICATIONS SHALL NOT BE CONSIDERED A FAILURE OF THE ESSENTIAL PURPOSE OF THE REMEDIES CONTAINED HEREIN. EXCEPT FOR THE ABOVE LIMITED WARRANTY, THE ENTIRE RISK OF THE SOFTWARE'S QUALITY AND PERFORMANCE IS WITH THE LICENSEE.

1. **INDEMNITY**
	1. **Indemnification**

The Licensor hereby indemnifies the Licensee against any claim that the Software, furnished and used within the scope of this Agreement, infringes any [COUNTRY] registered copyright or patent, provided that:

8.1.1 the Licensor is given prompt notice of the claim;

8.1.2 The Licensor is given immediate and complete control over the defence and/or settlement of the claim, and the Licensee fully cooperates with the Licensor in such defence and/or settlement;

8.1.3 the Licensee does not prejudice in any manner the Licensor's conduct of such claim; and

8.1.4 the alleged infringement is not based upon the use of the Software in a manner prohibited under this Agreement, in a manner for which the Software was not designed, or in a manner not in accordance with the Specifications.

* 1. **Altered Version**

The Licensor shall have no liability for any claim of infringement based on

8.2.1 the use of a superseded or altered version of the Software if infringement would have been avoided by the use of a current or unaltered version of the Software which the Licensor made available to the Licensee; or

8.2.2 the combination, operation or use of the Software with software, hardware or other materials not furnished by the Licensor.

* 1. **Injunction**

If a final injunction is obtained against the use of any part of the Software by reason of infringement of [COUNTRY] registered copyright or patent, the Licensor will, at its option and expense, either

8.3.1 procure for the Licensee the right to continue to use the Software;

8.3.2 modify the Software so that it becomes non-infringing; or

8.3.3 repurchase the Software and Documentation less depreciation at the rate of [%] per year, or *pro rata* for part of the year, from the date of Acceptance to the date of removal of the Software. If the Licensor selects this third option, the Licensee shall, immediately upon receipt from the Licensor of the payment set forth above, at the Licensor's option destroy or return all copies of the Software and Documentation in its possession or under its control.

* 1. **Liability**

The preceding states that the Licensor's entire obligation and liability concerning the infringement of any property right.

* 1. **Infringement**

The Licensee hereby indemnifies the Licensor against any claim for

8.5.1 alleged infringement of any [COUNTRY] registered copyright or patent, arising out of the use of the Software by the Licensee in any manner prohibited by this Agreement and

8.5.2 any claim related to or arising out of a financial transaction brought by any third party based on the use of the Software.

1. **LIMITATION OF LIABILITY**
	1. **Limitation**

THE LICENSOR SHALL HAVE NO LIABILITY CONCERNING ITS OBLIGATIONS UNDER THIS AGREEMENT OR OTHERWISE FOR CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, THE LIABILITY OF THE LICENSOR TO THE LICENSEE FOR ANY REASON AND UPON ANY [COUNTRY] CASE OF ACTION SHALL BE LIMITED TO THE LESSER OF THE AMOUNT PAID TO THE LICENSOR BY THE LICENSEE UNDER THIS AGREEMENT OR [AMOUNT]. THIS LIMITATION APPLIES TO ALL [COUNTRY]CASES OF ACTION IN THE AGREEMENT, INCLUDING WITHOUT LIMITATION TO BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATIONS, AND OTHER TORTS. BOTH PARTIES UNDERSTAND AND AGREE THAT THE REMEDIES AND LIMITATIONS HEREIN ALLOCATE THE RISKS OF PRODUCT AND SERVICE NON-CONFORMITY BETWEEN THE PARTIES AS AUTHORISED BY APPLICABLE LAWS. THE FEES HERE*IN RE*FLECT AND ARE SET *IN RE*LIANCE UPON, THIS ALLOCATION OF RISK AND THE EXCLUSION OF CONSEQUENTIAL DAMAGES OUTLINED IN THIS AGREEMENT.

* 1. **Force Majeure**

Neither party shall be under any liability for any loss or for any failure to perform any obligation hereunder due to causes beyond its control including without limitation industrial disputes of whatever nature, power loss, telecommunications failure, acts of God, or any other cause beyond its reasonable control.

1. **TERM AND TERMINATION**
	1. **Termination**

The Licence granted herein shall remain in effect perpetually unless terminated as provided for in Sections 10.2 or 10.3 herein.

* 1. **Breach**

The Licensor may terminate this Agreement and the Licence, without prejudice to any other remedy the Licensor may have, immediately without further obligation to the Licensee, in the event of

10.2.1 any breach by the Licensee of Sections 2, 5 or 6 of this Agreement which cannot be remedied within twenty-four (24) hours of the Licensor's notice to the Licensee of the breach and the Licensor's intent to terminate the Licence;

10.2.2 any material breach of Sections other than those set forth above which cannot be remedied within [NUMBER] days of the Licensor's notice to the Licensee of the breach and the Licensor's intent to terminate the Licence; or

10.2.3 the Licensee's making an assignment for the benefit of its creditors, the filing under any voluntary bankruptcy or insolvency law, under the reorganisation or arrangement provisions of the [COUNTRY] Bankruptcy Code, or under the provisions of any law of import in connection with the Licensee, or the appointment of a trustee or receiver for the Licensee or its property.

* 1. **Remedy**

The Licensee may terminate the Licence, without prejudice to any other remedy the Licensee may have, in the event of any material breach of this Agreement which is not remedied within [NUMBER] days of the Licensee's notice to the Licensor of the breach and the Licensee's intent to terminate the Licence. Termination shall not relieve the Licensee's obligation to pay all amounts which are due and payable or which the Licensee has agreed to pay.

* 1. **Cessation of Use**

Upon termination of this Agreement, the Licensee shall cease using the Software and Documentation and promptly return all copies of the Software, Documentation and all other Confidential Information in its possession or control. The Licensee shall delete all copies of such materials residing in on or off-line computer memory, and destroy all copies of such materials which also incorporate the Licensee's Confidential Information. The Licensor shall be entitled to enter the Location(s) to repossess and remove the Software, Documentation, and any other Confidential Information. The Licensee shall, within [NUMBER] days from the effective date of the termination, certify in writing by an officer or director of the party that all copies of the Software and Documentation have been returned, deleted and destroyed.

1. **HEADINGS**

The headings used in this Agreement are for convenience only and are not intended to be used as an aid to interpretation.

1. **VALIDITY**

If any part of this Agreement is held to be illegal or unenforceable, the validity or enforceability of the remainder of this Agreement shall not be affected.

1. **BINDING AGREEMENT**

This Agreement will be binding upon and inure to the benefit of the parties hereto, their respective successors and assigns. Licensee may not assign its rights or obligations under this Agreement without the prior written consent of Licensor.

1. **NO WAIVER**

Failure by either party to exercise any right or remedy under this Agreement does not signify acceptance of the event giving rise to such right or remedy.

1. **SOLICITATION**

The Licensee shall not solicit the employment of or employ any of the Licensor personnel who has been directly involved in the development, sale, installation, or support of the Software for a period of [NUMBER] years from the later of the termination of such individual's employment at the Licensor or the last date of Acceptance of any Software.

1. **GOVERNING LAW**

This Agreement shall be deemed to have been executed in [COUNTRY] and will be governed by and construed in accordance with the laws of [COUNTRY]. The parties hereby consent to the jurisdiction of the courts of [COUNTRY] for any action or proceeding brought by either of them in connection with this Agreement.

1. **NOTICE**

Unless otherwise agreed to by the parties, any notice required or permitted to be given or delivered under this Agreement shall be delivered to the address outlined in this Agreement. Notice shall be deemed to have been received by any party, and shall be effective,

* 1. on the day given, if personally delivered or if sent by confirmed facsimile transmission, receipt verified or
	2. on the third day after which such notice is deposited, if mailed by certified, first class, postage prepaid, return receipt requested mail.
1. **ATTORNEYS' FEES**

The Licensee shall be responsible for the Licensor's reasonable attorneys' fees associated with the enforcement of the terms of this Agreement or the collection of any amounts due under this Agreement.

1. **SURVIVAL**

Sections 5, 6, 8, 9 and 11 shall survive the termination of this Agreement for any reason.

1. **ENTIRE AGREEMENT**

This Agreement and its Riders and Schedules comprise the entire agreement between the parties regarding the subject matter hereof and supercedes and merges all prior proposals, understandings and all other agreements, oral and written between the parties relating to the Agreement.

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