SOFTWARE licence AGREEMENT

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This Software licence Agreement (the “Agreement”) is effective [DATE],

**BETWEEN: [FIRST PARTY NAME]** (the "First Party"), a company organised and existing under the laws of the [COUNTRY], with its head office located at:

[YOUR COMPLETE ADDRESS]

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

[COMPLETE ADDRESS]

WHEREAS Second Party has purchased from First Party certain fixed assets and intellectual property related to First Party’s office [SPECIFY] product suite hereinafter called [SPECIFY] with effect as of [EFFECTIVE DATE] pursuant to a Rollover Agreement between First Party and Second Party (the “Rollover Agreement”),

WHEREAS First Party has developed a [SPECIFY] and know-how called [SPECIFY] (including [SPECIFY] modules) as more fully described in Annexure “A”, and;

WHEREAS Second Party desires to develop and sell its [SPECIFY] product suite/line using [SPECIFY] as its software platform.

NOW, THEREFORE, in view of the covenants herein contained and this agreement hereunder taken, the parties hereto agree as follows:

1. **DEFINITIONS**

Wherever used in this Agreement, unless there is something in the subject matter or context inconsistent therewith, the following words and terms shall have the respective meanings ascribed to them as follows:

“Affiliate“and “Subsidiary” shall have the meaning ascribed to those terms under the [COUNTRY] [ACT/LAW/RULE] as amended.

“Assigned Software” means the [SPECIFY] software more fully described in Annexure A hereto.

“Authorised Subcontractor” means a third party than under contract with Second Party for the provision of services to the Second Party requiring access to, and use of the licenced Software and who has agreed in writing with Second Party not to use the licenced Software save for the provision of such services and save under terms and conditions at least as stringent, for such Authorised Subcontractor, as the terms and conditions applicable to Second Party including, for more certainty, restrictions with respect to the use of the licenced Software and to confidentiality.

“Documentation” means the documentation (other than materials falling under the definition of Source Documentation) that First Party provides to all licensees of the licenced Software.

“End User” means any Person having entered into an EULA with Second Party.

“End User licence Agreement” or “EULA” means a written licence agreement between an End User and Second Party, for the licensing, by Second Party to such End User, of the object code version of the Merged Software in accordance with Section 5.5 hereof.

“Intellectual Property” means anything that is or may be protected by any Intellectual Property Right such as but not limited to, works (including computer programs), confidential information, trade secrets, know-how, discoveries, inventions, trademarks or industrial designs.

“Intellectual Property Right” shall mean any right that is or may be granted or recognised under any [COUNTRY] or foreign legislation regarding patents, copyrights, confidential information, trade secrets, know-how, trademarks, industrial designs and any other statutory provision or common or civil [YOUR COUNTRY LAW] principle regarding intellectual and industrial property, whether registered or unregistered, and including rights in any application for any of the foregoing.

“Licensed Software” means those modules of the [SPECIFY] software listed in Annexure A hereto.

“Modification” includes any translation, abridgement, condensation, retrenchment, revision, correction, improvement, enhancements, customisations, expansion, additions, Updates, Upgrades or other modification to the licenced Software.

“Merged Software” means a computer programme embodying; (i) all or a substantial part of the Assigned Software and (ii) the licenced Software or any part thereof and in which the licenced Software or any part thereof so embodied in such a computer programme is not distinct from the Assigned Software or any part thereof so embodied in such computer program.

“Person” includes an individual, corporation, partnership, joint venture, trust, unaccompanied organisation, government or any agency or instrumentality thereof or any other entity recognised by [YOUR COUNTRY LAW].

“Related Agreement” means any Agreement entered into between First Party, on the first part, and Second Party and /or [INDIVIDUAL NAME], or [SPECIFY].

“Support and Maintenance Agreement” or “SMA” means a written agreement between an End User and [COMPANY NAME], for the provision of support and maintenance services with respect to the object code version of the Merged Software to an End User.

"Source Code” means the source code version of the licenced Software in machine-readable form on a machine-readable storage medium and which, when compiled, will produce the object code version of the licenced Software.

"Source Documentation" means of all available documentation and explanatory material, including programmer's notes, for the licenced Software.

"Source Material" means the Source Code and the Source Documentation.

“Third Party Material” means any computer program, documentation or other Intellectual Property, all or part of the Intellectual Property Rights in which are wholly or partially owned or controlled by a third party.

1. **SOURCE CODE LICENSE**
   1. Subject to continued compliance, by Second Party, with all its obligations hereunder and under any Related Agreement, First Party hereby grants to Second Party, which accepts, a fully paid-up, royalty-free, perpetual, non-transferable and non-exclusive licence to:
      1. make only those copies of the Source Material that Second Party requires for the purpose set forth in Section 2.1.2 hereof;
      2. make Modification to the Source Material for the sole purpose of:
2. integrating the licenced Software, or any part thereof, within the Merged Software, and
3. providing maintenance and support services with respect to the Merged Software to Second Party’s End-Users;
   * 1. recompile the Merged Software from the Source Code of the Merged Software;
     2. use the copy or copies of the recompiled (object code) version of the Merged Software solely as set forth in Section 3 to 5 hereof, and
     3. make Modifications to the Documentation for the sole purpose of adapting the same for the creation of user documentation for the Merged Software.
   1. For more certainty, Second Party shall have no rights in and to the Source Material other than the rights expressly granted to Second Party under Section 2.1 hereof.
   2. The recompiled (object code) of any Modified version of the Source Code is and shall remain subject to all of the same restrictions on use, reproduction, and disclosure that pertain to the object code version of the licenced Software hereunder.
4. **OBJECT CODE LICENSE**
   1. Subject to continued compliance, by Second Party, with all its obligations hereunder and under any Related Agreement, First Party hereby grants to Second Party, which accepts, a fully paid-up, royalty-free, perpetual, non-transferable and non-exclusive licence to [SPECIFY]:
      1. make only those copies of the Merged Software, in object code form only, and of its related user documentation as may be necessary for the exercise of Second Party’s rights and the performance of Second Party’s obligations hereunder and under any EULA or SMA; and
      2. distribute the Merged Software, in object code form only, and its related user documentation to End Users in accordance with Section 5 hereof, and
      3. grant sublicenses, under Second Party's name only, to End Users with respect to the Merged Software, in object code form only, and of its related user documentation in accordance with Section 5 hereof.
5. **RESTRICTIONS**

Save as expressly provided herein: (i) Second Party to make any copy of the licenced Software or of the Documentation other than such number of copies of the Software as it can demonstrate to the reasonable satisfaction of First Party that Second Party requires for back-up and archival purposes, provided that all titles, trademark, copyright, patent or other symbols, legends or other proprietary markings are reproduced on any such back-up or archival copies; and (ii) Second Party shall not either sell, lease, sublicense or otherwise transfer the licenced Software or the Documentation to any third-party or otherwise use or allow others to use the Software for the benefit of any third party.

1. **DISTRIBUTION AND LICENSING**
   1. Second Party shall have the right to appoint sub-distributors or agents for the distribution and licencing of the Merged Software and of its user documentation to End Users provided that:
      1. any such appointment shall be in the terms *mutatis mutandis* as the terms of this Agreement so far as applicable as if Second Party’s obligations hereunder where those of any such sub-distributor or agent; and
      2. Second Party shall be responsible to First Party for any breach, by any sub-distributors or agents, of the terms and conditions of their appointment as if such breaches where the breaches by Second Party of the terms and conditions hereof.
   2. Second Party shall make the licenced Software available to End Users in object forms only;
   3. The Merged Software and its related user documentation shall be made available to End User by Second Party only in accordance with the provisions of an EULA duly executed by the Second Party and the End User;
   4. Second Party shall not deliver possession of any copies of the Merged Software and the related user documentation to any third party unless that Person has first executed an EULA;
   5. Any licence granted by Second Party or any of its sub-distributors or agents to any End-User with respect to the Merged Software shall be personal to the End-User, non-exclusive and non-transferable and shall at least include contractual provisions which:
      1. restrict the use of the Merged Software in object code form;
      2. prohibit any reproduction of the of the Merged Software and related user documentation except for the reproduction of a single backup or archival copy;
      3. prohibit the assignment, time-sharing, sale, rental or other disposition of the of the Merged Software and related user documentation;
      4. prohibit the reverse engineering, disassembly or decompilation of the Merged Software;
      5. prohibit title to the Merged Software and related user documentation, including any Intellectual Property Right therein, from passing to the End User;
      6. expressly release and discharge First Party from any liability for any damages, whether direct, indirect or consequential arising from the use of the of the Merged Software and related user documentation, in terms at least as stringent as those set forth in Section 4 hereof; and
      7. require the End User, at the termination of the EULA, to discontinue the use of the of the Merged Software and related user documentation and destroy or return the same and all back-up, archival or other copies thereof to Second Party, with only those conflicting provisions which are necessary in order to comply with local [YOUR COUNTRY LAW] and which will have been subject to a prior written authorisation of Second Party and, as the case may be, with only those conflicting provisions which shall have been subject to a prior written authorisation from Second Party.
   6. Second Party shall comply with and perform its obligations under each EULA fully and promptly.
   7. If any End User breaches the terms of an EULA, Second Party shall use all reasonable endeavours to ensure that the breach is remedied and, to the extent Second Party is unsuccessful, or the breach is of such a nature that it cannot be remedied, then Second Party shall terminate the EULA in accordance with its terms and exercise its rights to recover the Merged Software and related user documentation from the End User or ensure that they are destroyed.
2. **DELIVERY** 
   1. First Party will deliver to Second Party, an of [EFFECTIVE DATE], with [NUMBER] copy on the machine-readable medium of:
      1. the object code version of the licenced Software;
      2. the Source Material for the licenced Software; and
      3. the documentation for the licenced Software.
3. **OWNERSHIP OF SOURCE MATERIAL AND RECOMPILED VERSIONS**
   1. Second Party acknowledges and agrees that First Party is the sole and exclusive owner of the Intellectual Property Right and the Source Material in and to the licenced Software.
   2. Second Party hereby assign to First Party all Intellectual Property Rights in and to all Modified versions of the licenced Software, including of any recompiled (object code) versions of the Source Code resulting from such Modifications, as of the date of inception of any such Modifications, which Modified versions shall automatically be subject to the licences granted in Sections 2 to 5 hereof.
   3. Second Party hereby irrevocably agree to promptly complete and sign, upon request from First Party, any documents necessary or useful in order to confirm or give effect to the assignment by Second Party, of all Intellectual Property Rights in any such Modifications.
4. **MANAGEMENT OF SOURCE CODE**
   1. The Source Material shall at all times remain at the Second Party’s premises.
   2. Second Party shall have the right to use the Source Code only for the purposes and only as long as necessary in order to exercise the rights licenced under Section 2 hereof (the "Authorised Purpose").
   3. Once the Modifications are completed, the original version and the Modified version of the Source Code shall be immediately delivered to First Party by Second Party by such means that shall be agreed upon at such time between Second Party’s Officers and the First Party’s Officers.
   4. Second Party agrees to maintain accurate records of all the location and uses, at any given point in time, of all copies of the Source Material and recompiled (object code) copies thereof.
   5. First Party shall have the right, at any time during Second Party business hours, following a notice of at least [NUMBER] day, to visit Second Party’s premises, and to obtain any information or document, including copies thereof, and to make any reasonable enquiries and verifications in order to ensure compliance, by Second Party, with all its obligations hereunder.
5. **CONFIDENTIALITY AND NON-COMPETITION**
   1. Second Party acknowledges and agrees that the licenced Software and Source Material is a valuable trade secret of First Party and contains proprietary and confidential information. Second Party agrees to keep the Source Material, including each Modified version thereof made hereunder and each recompiled version of such Modified version (“Confidential Information”) in strict confidence and to take all reasonable measures but, in any event, measures no less restrictive than the measures set forth herein, to prevent any unauthorised access, disclosure, possession, alteration, transfer, use, and reproduction of the Confidential Information and, except as may be required for the performance of its rights and obligations hereunder, Second Party shall neither disclose the Confidential Information to anyone.
   2. Second Party’s non-compete undertaking in favour of First Party is that found in Annexure B.
   3. First Party’s non-compete undertaking in favour of Second Party is that found in Annexure C.
6. **WARRANTIES AND DISCLAIMERS** 
   1. Each Party represents to the other Party and acknowledges such other Party’s reliance upon such representations, that this Agreement has been duly authorised, executed and delivered by its representative and that there is no requirement for its representative to obtain any other authorisation, consent or approval from such Party as a condition to the enforceability of any provision of this Agreement or the lawful conclusion of the transactions contemplated by this Agreement.
   2. THE USE OF THE licenced SOFTWARE UNDER THIS DEMONSTRATION licence IS PROVIDED "AS IS" AND ELIX NEITHER MAKES NOR GRANTS ANY OTHER WARRANTIES, EXPRESS OR IMPLIED. LICENSOR EXCLUDES ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE TO THE EXTENT ALLOWED UNDER THE [YOUR COUNTRY LAW]. EXCEPT FOR THE FOREGOING EXPRESS WARRANTIES, AND EXCEPT IN THE EVENT OF BODILY INJURY OR DEATH OF ANY PERSON OR DAMAGE TO PROPERTY INCURRED IN THE PERFORMANCE HEREOF AND TO THE EXTENT CAUSED BY THE NEGLIGENT OR WILFUL ACTS OR OMISSIONS OF A PARTY IN THE PERFORMANCE HEREOF FOR WHICH THERE SHALL BE NO LIMIT ON PARTIES’ LIABILITY: (I) NEITHER PARTY SHALL BE LIABLE FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OR USE OR THE LOSS OF DATA OR INFORMATION OF ANY KIND, HOWEVER CAUSED, WITH RESPECT TO, ARISING OUT OF, OR IN CONNECTION WITH, THIS AGREEMENT EVEN IF APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING; AND (II) NEITHER PARTY’S LIABILITY TO THE OTHER FOR BREACH OF ANY OTHER PROVISION OF THIS AGREEMENT SHALL EXCEED [AMOUNT].
7. **TERM AND TERMINATION**
   1. This Agreement shall be deemed to have come into force and effect as of the Effective Date set forth at the beginning of this Agreement and shall continue until terminated in accordance with the provisions of this Agreement.
   2. Either Party may terminate this Agreement, upon written notice to the other Party, if such other Party takes or is required by any person with proper authority to take, any of the following actions:
8. an assignment, composition or similar act for the benefit of creditors;
9. an attachment or receiving of assets;
10. the filing of a petition for bankruptcy, insolvency or relief of debtors or the institution of any proceedings relating to bankruptcy, insolvency or relief of debtors;
11. committing or threatening to commit any act of bankruptcy; or
12. a winding-up, liquidation or dissolution of the business pursuant to an order of a court of competent jurisdiction.
    1. Each Party (“Non-Breaching Party”) may terminate this Agreement in the case of breach by the other Party (“Breaching Party”) of its obligations hereunder, provided that such breach is not cured within [NUMBER] days of notification by Non-Breaching Party of such breach.
    2. First Party may terminate this Agreement for a cause with immediate effect by giving written notice of termination to Second Party upon the occurrence of any one or more of the following events:

11.4.1 If Second Party has breached any of its obligations under Section 2, 8 or 9 hereof;

11.4.2 If any Related Agreement is terminated for any reason other than a breach, by First Party, of its obligations under such Related Agreement; or

1.4.3 If any claim is brought by any third party alleging that all or part of the licenced Software or of the Documentation constitute an infringement, violation or misappropriation of any third party’s right, including Intellectual Property Right.

* 1. Upon termination of this Agreement, Second Party shall deliver to First Party all copy of the licenced Software and of the Documentation in its possession or under its control as well any materials relating to First Party, or this Agreement, or obtained or developed in the course of performance of this Agreement, or containing or derived from Confidential Information and, if requested by First Party, a certificate from one of Second Party’s officers evidencing compliance with this paragraph.
  2. Save as otherwise provided above, Parties right to terminate this Agreement is without prejudice to and shall not affect any other remedies available to Parties.
  3. Sections 7, 9 and 10 shall remain in force and effect after the termination hereof for any reason.

1. **ASSIGNMENT**

Second Party cannot assign this Agreement, nor any of its right or obligations hereunder, without the express written consent of First Party.

1. **GENERAL TERMS AND CONDITIONS**
   1. **Further Assurances**

Each Party agrees that it shall do or cause to be done all such acts and execute or cause to be executed all such further documents as are within its power to cause the doing or execution of as may be necessary or desirable to give effect to this Agreement.

* 1. **Time of Essence**

Time shall be of the essence hereof.

* 1. **Independent Contractors**

This is an agreement between separate legal entities and neither is the agent or employee of the other for any purpose whatsoever. The Parties do not intend to create a partnership or joint venture between themselves. Neither Party shall have the right to bind the other to any agreement with a Person or to incur any obligation or liability on behalf of the other Party.

* 1. **Notice**

Any notice, demand or other communication required or permitted to be given to either Party to this Agreement shall be delivered or sent to the addresses set out on the Signature Page of this Agreement. The address and the person to whose attention notice may be given to a Party may be changed by such Party giving notice to the other Party as provided in this section. All notices shall be in writing and shall be:

1. personally, delivered by hand or delivered by prepaid courier and signed for on delivery. Any notice so sent shall be deemed received upon actual delivery;
2. or sent by facsimile confirmed by prepaid registered mail. Any notice so sent shall be deemed received upon the date the sending terminal confirms that the notice was received by the receiving terminal; or
3. sent by prepaid registered mail, return receipt requested. Any notice so sent shall be deemed received on the [NUMBER] business day following mailing, except in the case of a mail strike or disruption of postal services.
4. In the case of actual or apprehended mail strike or disruption of postal services, notice shall be delivered by hand or by courier service.
   1. **General Interpretation**

Headings and titles in this Agreement are for convenience of reference only and shall not affect the construction or interpretation hereof. Words in the singular include the plural and vice-versa and words in one gender include all genders. The terms “including” and “includes” shall be deemed to be followed by the statement “without limitation” and neither of such terms shall be construed to limit any word or statement it follows to the specific or similar terms or matters immediately following it.

* 1. **Invalidity**

If any provision contained in this Agreement is found by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, it shall be deemed severed from this Agreement and the remaining provisions contained herein shall not be in any way affected or impaired thereby.

* 1. **Governing Law**

This Agreement shall be governed by and construed in accordance with the [YOUR COUNTRY LAW] of the Province of [COUNTRY] and the national [YOUR COUNTRY LAW] of [COUNTRY] applicable therein, excluding those provisions relating to conflicts of [YOUR COUNTRY LAW] and excluding the United Nations Convention on Contracts for the International Sale of Goods if applicable. The [COMPANY NAME] hereby irrevocably attorn to the jurisdiction of the Courts of the Province of [COUNTRY], district of [COUNTRY], or the National Court of [COUNTRY] sitting in such province and district.

* 1. **Waiver**

A term or condition of this Agreement can be waived or modified only by written consent of both parties. No failure or delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

* 1. **Entire Agreement**

The Parties agree that this Agreement, including any attached Specific Terms and Annexures, constitutes the complete and exclusive statement of the terms and conditions between them covering the performance of the Agreement. Any representation, warranty or condition, written or otherwise, not expressly contained in this Agreement or in an authorised written amendment thereto shall not be enforceable by either Party.

Each of the Parties acknowledges that it has not been induced to enter into this Agreement by any representations not specifically stated herein. This Agreement supersedes all expressly inconsistent representations, whether oral or written, of the Parties pertaining to the subject matter of the Agreement. Each Party acknowledges that it has read and understood this Agreement and agrees to be bound by its terms. [to be adjusted in light of closing documentation]

* 1. **Force Majeure**

Neither Party shall be liable for delay or failure in performance resulting from acts beyond the control of such Party, including, but not limited to acts of God, acts of war, riot, fire, flood, or other disaster, acts of government, strike lockout or communication line or power failures.

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

# FIRST PARTY SECOND PARTY

Authorised Signature Authorised Signature

Print Name and Title Print Name and Title

**ANNEXURE A**

[COMPANY NAME] By: Name: Title: Date: [COMPANY NAME] By: Name: Title: Date:

[SPECIFY] Files

[SPECIFY] msAPI

[SPECIFY] MSCF Files

[SPECIFY] SDK

ANNEXURE B

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NON-COMPETITION, NON SOLICITATION AND CONFIDENTIALITY AGREEMENT

This Non-Competition, Non-Solicitation and Confidentiality Agreement (the “Agreement”) is effective [DATE],

**BETWEEN: [FIRST PARTY NAME]** (the "First Party"), a company organised and existing under the laws of the [Country] of [COUNTRY], with its head office located at:

[YOUR COMPLETE ADDRESS]

**AND: [SECOND PARTY NAME]** (the "Second Party"), a company organised and existing under the laws of the [Country] of [COUNTRY], with its head office located at:

[COMPLETE ADDRESS]

WHEREAS the Purchaser has purchased from First Party all of the fixed assets and intellectual property related to First Party’s [SPECIFY] product suite (hereinafter called [SPECIFY]) with effect as of and from the first minute on [EFFECTIVE DATE] pursuant to the rollover agreement between First Party and the Purchaser entered into as of [EFFECTIVE DATE] (the “Rollover Agreement”);

WHEREAS in connection with the purchase and sale of [SPECIFY], the Purchaser has agreed to execute this Agreement in favour of First Party;

NOW THEREFORE IN CONSIDERATION OF THE MUTUAL COVENANTS AND AGREEMENTS HEREIN CONTAINED AND SUCH OTHER GOOD AND VALUABLE CONSIDERATION THE PARTIES HEREBY AGREE AS FOLLOWS:

## PREAMBLE

The preamble hereof shall form an integral part of this Agreement.

## NON-COMPETITION; NON-SOLICITATION; CONFIDENTIALITY

* 1. The Purchaser agrees that neither it nor any of its affiliates, which now exist or come into existence during the said period (as this term is defined in the [COUNTRY] Business Purchasers Act) (the “Affiliates”) shall:
     1. From the date hereof to for a period of [NUMBER] years from the termination of the Software licence Agreement, within the limits of the Territory (as hereinafter defined) either individually or in partnership or in conjunction with any physical or legal person, firm, association, syndicate, company, Purchaser or other juridical entity, or any group composed of one or more of the foregoing, as principal, shareholder, partner, agent, investor, independent contractor or in any other capacity whatsoever, directly or indirectly, carry on, engage in, be interested or connected or associated with or assist in financing or obtaining financing for any business whose principal activity, products and markets are described in Annexure I herein, which are competitive with the current products of First Party and the future developments of these products (hereinafter called the “Products”);
     2. From the date hereof to for a period of [NUMBER] years from the termination of the Software licence Agreement, within the limits of the Territory, either individually or in partnership or in conjunction with any physical or legal person, firm, association, syndicate, company, company or other juridical entity, or any group composed of one or more of the foregoing, as principal, shareholder, partner, agent, investor, independent contractor, or in any other capacity whatsoever, directly or indirectly solicit, offer to sell or sell any of the Products or any products or merchandise which are similar to and competitive with the Products sold by First Party to its clients and/or distributors or otherwise deal or contract with the clients and/or distributors of First Party with a view to having them contract to purchase any such products or merchandise, including, without limitation, the Products;
     3. From the date hereof to for a period of [NUMBER]) years from the termination of the Software licence Agreement, solicit, induce, or attempt to persuade any supplier, distributor or client of First Party or any of its subsidiaries or affiliates, to terminate his or her or its relationship with First Party or any of its subsidiaries or affiliates, or to breach any contract with First Party or any of its subsidiaries or affiliates, nor shall the Purchaser advise any physical or legal person or persons, firm, association, syndicate, company or company not to do business with First Party or any of its subsidiaries or affiliates;
     4. directly or indirectly disclose to any physical or legal person, firm, association, syndicate, company, company or other juridical entity, or any group composed of one or more of the foregoing, any trade secrets or confidential information relating to the business or to the affairs, operations or clientele of First Party. The Purchaser shall take, and cause to be taken by its employees, agents and servants, all reasonable precautions to preserve the confidential, proprietary and secret nature of all information that is disclosed to the Purchaser in connection with First Party. The Purchaser’s obligations hereunder shall not apply to any information which it can reasonably demonstrate through documentation has become generally known to the trade or the public, through no fault or action on its part, or those of its employees, agents and servants, prior to or subsequent to the disclosure.

For the purposes of sections 2.1.1 and 2.1.2 hereof, when referring to “indirectly”, the Purchaser undertakes to take all necessary steps to ensure that its VARs will not contravene the spirit of this Agreement.

The Purchaser confirms that all restrictions in this ARTICLE of [NUMBER] are reasonable and valid, and waives all defences to the strict enforcement thereof.

The covenants in this ARTICLE [NUMBER] shall not be held invalid or unenforceable because of the scope of the territory, or actions subject hereto or restricted hereby, or the period of time within which this covenant is operative; but the maximum territory, the actions subject to these covenants, and the period of time in which these covenants are enforceable are subject, respectively, to determination by a final judgement  of any court that has jurisdiction over the parties and subject matter.

For the purposes of this Agreement, Territory shall mean the world.

## WAIVER, LIQUIDATED DAMAGES AND INJUNCTIVE RELIEF

* 1. Failure of First Party to insist upon strict performance of any term or condition of this Agreement or to exercise any right, remedy or recourse hereunder shall not be construed as a waiver or relinquishment of any such term or condition.
  2. No assent or consent to any variation of any term or condition of this Agreement shall be valid unless in writing.
  3. The rights, remedies, and recourses of First Party under this Agreement are cumulative and are not in substitution for any other rights provided by [YOUR COUNTRY LAW].
  4. The Purchaser acknowledges that any violation by it or any of the Affiliates of any terms or conditions hereof shall cause irreparable damage to First Party and agrees that in the event of any such violation, First Party shall have the immediate remedy of injunction to enforce performance by the Purchase of the terms and conditions hereof, damages at [YOUR COUNTRY LAW] being an inadequate remedy. First Party also reserves all its other recourses pursuant to [YOUR COUNTRY LAW].

## MISCELLANEOUS

* 1. If any provision of this Agreement shall be held invalid or unenforceable in any jurisdiction, such invalidity or unenforceability shall attach only to such provision and such jurisdiction and shall not in any manner affect or render invalid or unenforceable such provision in any other jurisdiction nor any other provision of this Agreement in any jurisdiction.
  2. This Agreement shall enure to the benefit of and shall be binding upon the parties hereto and the successors or permitted assigns of each. Without limiting the generality of the foregoing, this Agreement and the covenants herein contained shall survive any amalgamation or company reorganisation of First Party, such that the resulting entity shall benefit from and be entitled to enforce same against the Purchaser as if it had been a party and signatory to this Agreement.
  3. The section and paragraph headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.
  4. This Agreement may be amended only by a written instrument signed by each of the parties hereto.
  5. This Agreement, the Rollover Agreement and all other agreements to be delivered pursuant to the Rollover Agreement constitute the entire agreement between the parties with respect to the subject matter hereof and cancel and supersede any prior understandings and agreements between the parties hereto *in re*spect thereof.
  6. In this Agreement, words importing number shall include the singular and plural, words importing gender shall include the masculine and feminine, and words importing persons shall include individuals, partnerships, legal persons, joint ventures, associations, trusts, noncompany organisations, corporations, governmental bodies and other entities.
  7. The parties hereto confirm that they have been afforded the opportunity to obtain independent advice with respect to this Agreement and confirm that they are executing this Agreement freely, voluntarily and without duress.
  8. This Agreement shall be deemed to have been made in the Province of [COUNTRY] and shall be construed and enforced in accordance with, and be governed by, the [YOUR COUNTRY LAW] of [COUNTRY] and the [YOUR COUNTRY LAW] of [COUNTRY] applicable therein.
  9. Any notice, direction or other instrument required or permitted to be given under this Agreement shall be in writing and may be given by delivering the same or sending the same by telecopier to the party in question as follows:

If to First Party:

First Party

[FULL ADDRESS]

[COUNTRY]

Attention: [INDIVIDUAL NAME]

Telecopier: [FAX NUMBER]

If to the Purchaser:

First Party

[FULL ADDRESS]

[COUNTRY]

Attention: [INDIVIDUAL NAME]

Telecopier: [FAX NUMBER]

Any such notice, direction or other instrument, if delivered, shall be deemed to have been given on the date on which it was delivered, and if transmitted by telecommunication, shall be deemed to have been given at the opening of business in the office of the addressee on the business day next following the transmission thereof. In this paragraph, “business day” means any day except Saturday, Sunday or a statutory holiday in [COUNTRY] or [COUNTRY].

Any party hereto may change its address for service from time to time by notice given to the other party hereto in accordance with the foregoing.

* 1. Time shall be of the essence of this Agreement.
  2. This Agreement may be executed in one or more counterparts each of which when so executed shall be deemed to be an original and such counterpart together shall constitute but one of the same instrument.
  3. The parties hereto have expressly required that this Agreement and all deeds, documents and notices relating thereto be drafted in the English language. Les parties aux présentes ont expressément exigé que la présente convention et tous les autres contrats, documents ou avis qui y sont afférents soient rédigés en langue anglaise.

ANNEXURE C

NON-COMPETITION, NON SOLICITATION AND CONFIDENTIALITY AGREEMENT

This Non-Competition, Non-Solicitation and Confidentiality Agreement (the “Agreement”) is effective [DATE],

**BETWEEN: [FIRST PARTY NAME]** (the "First Party"), a company organised and existing under the laws of the [Country] of [COUNTRY], with its head office located at:

[YOUR COMPLETE ADDRESS]

**AND: [SECOND PARTY NAME]** (the "Second Party"), a company organised and existing under the laws of the [Country] of [COUNTRY], with its head office located at:

[COMPLETE ADDRESS]

WHEREAS the Purchaser has purchased from the Seller all of the fixed assets and intellectual property related to the Seller’s [SPECIFY] product suite (hereinafter called [SPECIFY]) with effect as of and from the first minute on [DATE] pursuant to the rollover agreement between the Seller and the Purchaser entered into as of [DATE] (the “Rollover Agreement”);

WHEREAS in connection with the purchase and sale of [SPECIFY], the Seller has agreed to execute this Agreement in favour of the Purchaser;

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND AGREEMENTS HEREIN CONTAINED AND SUCH OTHER GOOD AND VALUABLE CONSIDERATION THE PARTIES HEREBY AGREE AS FOLLOWS:

ARTICLE [NUMBER]

## PREAMBLE

The preamble hereof shall form an integral part of this Agreement.

## NON-COMPETITION; NON-SOLICITATION; CONFIDENTIALITY

* 1. The Seller agrees that neither it nor any of its affiliates, which now exist or come into existence during the said period (as this term is defined in the [COUNTRY] Business Purchasers [ACT/LAW/RULE]) (the “Affiliates”) shall:
     1. From the date hereof to for a period of [NUMBER] years from the termination of the Software licence Agreement, within the limits of the Territory (as hereinafter defined) either individually or in partnership or in conjunction with any physical or legal person, firm, association, syndicate, company, company or other juridical entity, or any group composed of one or more of the foregoing, as principal, shareholder, partner, agent, investor, independent contractor or in any other capacity whatsoever, directly or indirectly, carry on, engage in, be interested or connected or associated with or assist in financing or obtaining financing for any business whose principal activity, products and markets are described in Annexure I herein, which are competitive with the current products of the Purchaser and the future developments of [SPECIFY] (hereinafter called the “Products”);
     2. From the date hereof to for a period of [NUMBER] years from the termination of the Software licence Agreement, within the limits of the Territory, either individually or in partnership or in conjunction with any physical or legal person, firm, association, syndicate, company, company or other juridical entity, or any group composed of one or more of the foregoing, as principal, shareholder, partner, agent, investor, independent contractor, or in any other capacity whatsoever, directly or solicit, offer to sell or sell any of the Products or any products or merchandise which are similar to and competitive with the Products sold by the Purchaser to its clients and/or distributors or otherwise deal or contract with the clients and/or distributors of the Purchaser with a view to having them contract to purchase any such products or merchandise, including, without limitation, the Products;
     3. From the date hereof to for a period of [NUMBER] years from the termination of the Software licence Agreement, solicit, induce, or attempt to persuade any supplier, distributor or client of the Purchaser or any of its subsidiaries or affiliates, to terminate his or her or its relationship with the Purchaser or any of its subsidiaries or affiliates, or to breach any contract with the Purchaser or any of its subsidiaries or affiliates, nor shall the Seller advise any physical or legal person or persons, firm, association, syndicate, company or company not to do business with the Purchaser or any of its subsidiaries or affiliates;
     4. directly or indirectly disclose to any physical or legal person, firm, association, syndicate, company, company or other juridical entity, or any group composed of one or more of the foregoing, any trade secrets or confidential information relating to the business or to the affairs, operations or clientele of the Purchaser. The Seller shall take, and cause to be taken by its employees, agents and servants, all reasonable precautions to preserve the confidential, proprietary and secret nature of all information which is disclosed to the Seller in connection with the Purchaser. The Seller’s obligations hereunder shall not apply to any information which it can reasonably demonstrate through documentation has become generally known to the trade or the public, through no fault or action on its part, or those of its employees, agents and servants, prior to or subsequent to the disclosure.

For the purposes of sections 2.1.1 and 2.1.2 hereof, when referring to “indirectly”, the Seller undertakes to take all necessary steps to ensure that its VARs will not contravene the spirit of this Agreement.

The Seller confirms that all restrictions in this ARTICLE [NUMBER] are reasonable and valid, and waives all defences to the strict enforcement thereof.

The covenants in this ARTICLE [NUMBER] shall not be held invalid or unenforceable because of the scope of the territory, or actions subject hereto or restricted hereby, or the period of time within which this covenant is operative; but the maximum territory, the actions subject to these covenants, and the period of time in which these covenants are enforceable are subject, respectively, to determination by a final judgement  of any court that has jurisdiction over the [COMPANY NAME] and subject matter.

For the purposes of this Agreement, Territory shall mean the world.

## WAIVER, LIQUIDATED DAMAGES AND INJUNCTIVE RELIEF

* 1. Failure of the Purchaser to insist upon strict performance of any term or condition of this Agreement or to exercise any right, remedy or recourse hereunder shall not be construed as a waiver or relinquishment of any such term or condition.
  2. No assent or consent to any variation of any term or condition of this Agreement shall be valid unless in writing.
  3. The rights, remedies, and recourses of the Purchaser under this Agreement are cumulative and are not in substitution for any other rights provided by [YOUR COUNTRY LAW].
  4. The Seller acknowledges that any violation by it or any of the Affiliates of any terms or conditions hereof shall cause irreparable damage to the Purchaser and agrees that in the event of any such violation, the Purchaser shall have the immediate remedy of injunction to enforce performance by the Seller of the terms and conditions hereof, damages at [YOUR COUNTRY LAW] being an inadequate remedy. The Purchaser also reserves all its other recourses pursuant to [YOUR COUNTRY LAW].

1. **MISCELLANEOUS**
   1. If any provision of this Agreement shall be held invalid or unenforceable in any jurisdiction, such invalidity or unenforceability shall attach only to such provision and such jurisdiction and shall not in any manner affect or render invalid or unenforceable such provision in any other jurisdiction nor any other provision of this Agreement in any jurisdiction.
   2. This Agreement shall enure to the benefit of and shall be binding upon the [YOUR COUNTRY LAW] hereto and the successors or permitted assigns of each. Without limiting the generality of the foregoing, this Agreement and the covenants herein contained shall survive any amalgamation or company reorganisation of the Purchaser, such that the resulting entity shall benefit from and be entitled to enforce same against the Seller as if it had been a party and signatory to this Agreement.
   3. The section and paragraph headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.
   4. This Agreement may be amended only by a written instrument signed by each of the parties hereto.
   5. This Agreement, the Rollover Agreement and all other agreements to be delivered pursuant to the Rollover Agreement constitute the entire agreement between the [YOUR COUNTRY LAW] with respect to the subject matter hereof and cancel and supersede any prior understandings and agreements between the parties hereto *in re*spect thereof.
   6. In this Agreement, words importing number shall include the singular and plural, words importing gender shall include the masculine and feminine, and words importing persons shall include individuals, partnerships, legal persons, joint ventures, associations, trusts, unaccompanied organisations, Purchasers, governmental bodies and other entities.
   7. The parties hereto confirm that they have been afforded the opportunity to obtain independent advice with respect to this Agreement and confirm that they are executing this Agreement freely, voluntarily and without duress.
   8. This Agreement shall be deemed to have been made in the Province of [COUNTRY] and shall be construed and enforced in accordance with, and be governed by, the [YOUR COUNTRY LAW] of [COUNTRY] and the [YOUR COUNTRY LAW] of [COUNTRY] applicable therein.
   9. Any notice, direction or other instrument required or permitted to be given under this Agreement shall be in writing and may be given by delivering the same or sending the same by telecopier to the party in question as follows:

If to the Seller:

Seller

[FULL ADDRESS]

[COUNTRY]

Attention: [INDIVIDUAL NAME]

Telecopier: [FAX NUMBER]

If to the Purchaser:

Seller

[FULL ADDRESS]

[COUNTRY]

Attention: [INDIVIDUAL NAME]

Telecopier: [FAX NUMBER]

Any such notice, direction or other instrument, if delivered, shall be deemed to have been given on the date on which it was delivered, and if transmitted by telecommunication, shall be deemed to have been given at the opening of business in the office of the addressee on the business day next following the transmission thereof. In this paragraph, “business day” means any day except Saturday, Sunday or a statutory holiday in [COUNTRY] or [COUNTRY].

Any party hereto may change its address for service from time to time by notice given to the other party hereto in accordance with the foregoing.

* 1. Time shall be of the essence of this Agreement.
  2. This Agreement may be executed in one or more counterparts each of which when so executed shall be deemed to be an original and such counterparts together shall constitute but one of the same instruments.

ANNEXURE I

LIST OF PRODUCTS

[COMPANY NAME]