TERMS & CONDITIONS

APPLICATION SOFTWARE LICENSE AGREEMENT

RECITALS
(a) **Whereas the Licensor has developed application software; and**

(b) **Whereas the Licensee wishes to obtain a license to use the application software;**

NOW THEREFORE the Licensor and the Licensee hereby agree to the following:

1   Definitions

Unless the contrary is clearly indicated, the following words and/or phrases used in this Agreement shall have the following meaning:

1.1   "Order" shall mean the attached "Order Form";

1.2   "Commencement Date" shall mean the date of signature hereof;

1.3   "Copyright" shall mean all rights of Copyright whether existing now or in the future in and to the Software including initial drawings, sketches, flow charts and designs relating thereto;

1.4   "Currency" shall mean South African Rand;

1.5   "Designated Site" shall mean: The premises of operation of the License;

1.6   "Dongle" shall mean: program key or hasp.

1.7   "Intellectual Property Rights" shall mean all present and future rights in the Software and other rights which may in the future be based thereon, including but not limited to Copyright;

1.8   "License" shall mean a non-transferable and non-exclusive right granted to the Licensee to Use the Software and to make sufficient copies of the Software for backup purposes;

1.9   "License Fee" shall mean the amount stipulated on the order;

1.10   "Purchase Price" shall mean the amount stipulated on the order;

1.11   "Payment Date" shall mean:

1.11.1   In regard to the Purchase Price: date of delivery;

1.11.2   In regard to the License Fee: In the delivery year, the License Fee for each Software, as set forth on the face of the Order, is payable from the first whole month after delivery is made and for each subsequent month for the rest of the year until 31st January of the following year. Thereafter the License Fee is payable in advance for the whole year and falls due for payment before 15 February each year.

1.11.3   The License Fee may be adjusted annually in accordance with the South African Consumer Price Index, without any notice in advance.

1.11.4   All amounts in this contract are in Rand unless stipulated otherwise, and excludes any foreign or local taxes and fees that may be imposed from time to time.

1.12   "Software" shall mean:

1.12.1   The Software Disks, CD Disks, Software Dongle, and documentation;

1.12.2   The right to the installation and the use of the Software on one work station placed at the Purchaser's fixed sales outlet;

1.12.3   The use of the Software by the Purchaser for sales purposes only.

1.13   "Software Documentation" shall mean the written document(s) containing detailed instructions pertaining to the use of the Software and setting out the operation of the Software;

1.14   "Use" shall mean that the Licensee is entitled to allow the Software to operate for the benefit of the Licensee on the Designated Site on the Licensee's own internal operating systems or central processors.

2   Grant and nature of license

2.1   The Licensor herewith grants a License at the Purchase Price and at the License Fee to the Licensee to use the Software items described in the Order and herein.

2.2   Only when the payment plan, including the License Fee/s, are fully adhered to does the Purchaser have the right to the License.

2.3   The License granted to the Licensee authorises the Licensee to Use the Product at the Designated Sites until the Agreement is terminated.

2.4   The Licensee shall not have the right to sub-license or transfer the Software in any way, either in whole or in part, to any third party.

2.5   The Licensee shall not copy nor permit any party to copy the Software, except to make sufficient copies solely for backup or archival purposes.

2.6   The Licensee shall not modify, de-compile, disassemble or otherwise reverse-engineer the Software, or attempt to do any of these; provided that this stipulation shall not be applicable where de-compilation is permitted by law.

3   Delivery

The Licensor shall use its best efforts to deliver the Software to the place of delivery designated in writing by the Licensee on the face of the Order on or before the estimated date of delivery as specified on the face of the Order.

4   Commencement and duration

4.1   This Agreement shall commence on the Commencement Date.

4.2   The Agreement will continue in force until 31 January of the following year calculated from the Commencement Date and thereafter automatically be renewed for further periods of 1 (one) year, unless terminated earlier. A letter of termination must be received by the Licensor at least three months before the automatic renewal (before 31 October).

5   Payment

5.1   In consideration of the License, being granted, the Licensee shall pay the Licensor the Purchase Price and the License Fee, on the Payment Date(s), in the Currency

5.2   The License Fees is invoiced annually on the 1st of February and payable before the 15th of February of the same year. The License Fee is increased annually according to the inflation rate applicable to that period.

5.3   The License Fees contract may be cancelled, if notice is received by the Licensor at least three months before the 1st of February. However, then the Licensee will receive no support nor updates on the programme until arrears are settled.

5.4   The License Fee, as well as any other funds due by either of the Parties to the other, shall exclude any taxes and/or levies due as a result of a requirement by any governmental organization (which shall include but not be limited to any value added tax, importation tax, withholding tax and general sales tax) and all these taxes and/or levies, shall be paid by the Licensee.

5.5   Purchasers outside the Republic of South Africa will be responsible to pay any tax as imposed by the Government, including import duty / surcharges, etc.

5.6   Rental contracts are not liable for license fees. All program updates & support will be received as part of the rental fee. Catalogues are not included in the rental and must be purchased separately. All rentals increase each February.

5.7   All rental contracts, if not cancelled in writing prior to the completion of the agreed rental period, will automatically be renewed for another contract term. This term must complete with full payment before cancellation can be accepted.

5.8   An admin fee of R200 will be invoiced for every payment not made on the agreed payment date. Any outstanding payments of 60 days or more will be sent to debt collectors. All collection fees by the debt collectors will be for the purchaser's \ expense and will be invoiced accordingly.

6   User Support

6.1.1   The Licensee is entitled to receive assistance in the use of the Software directly from the Licensor, free of charge during the normal working hours of the Licensor, only if the license fee has been paid in full.

6.1.2   User support is given by telephone, electronic mail, and fax, and if the Licensee cannot get through, it is the Licensee who must initiate contact.

6.1.3   The Licensor will on request supply training on the date of installation at the Licensee's premises at a fee, and will be invoiced separately.

6.2   New Versions
New versions of the Software will be sent to the Licensee free of charge only if the Licensee has paid for the license fee. These will include improvements and changes which are the result of the natural development of the programme. Should the Licensee require further alterations or improvements to the Software, this will be arranged and paid for under a separate agreement. Catalogue updates are not included in the license fee and must be purchased separately.

7   Limitation of liability

7.1   The liability of the Licensor for faulty execution of the Software as well as all damages suffered by the Licensee, whether direct or indirect, as a result of the malfunctioning of such Software, will be limited to the Licensor rectifying the malfunction, within a reasonable time and free of charge, provided that the Licensor is notified immediately of the damage or faulty execution of the Software.

7.2   This liability is completely excluded if the Licensee attempts to correct or allows third parties to correct or attempt to correct the Software without the prior written approval of the Licensor.

7.3 Any other liability on the part of the Licensor arising from any cause whatsoever is specifically excluded. Without limiting the generality of the foregoing, the licensor shall not be liable for any delay, failure, breakdown, damage or injury caused by:

7.3.1 software, programs and support services supplied by or obtained by the Licensee without the consent or knowledge of the Licensor; or

7.3.2 software or programs modified by the Licensee or any third party not authorised to do so in terms of the Agreement; or

7.3.3 the actions or requirements of any telecommunications authority or a supplier of telecommunications services or software.

7.4 In no event shall the Licensor be liable to the Licensee for loss of profits or for incidental, special or consequential damages arising out of or in connection with the Software or the delivery, installation, servicing, performance or use of it in combination with other computer software.

8   Intellectual Property Rights

8.1 The Licensee acknowledges that any and all of the Intellectual Property Rights used or embodied in or in connection with the Software are and will remain the sole property of the Licensor or his principal.

8.2 The Licensee shall not question or dispute the ownership of such rights at any time during the continuation in force of the Agreement or thereafter.

8.3 The Licensor warrants that, to the best of its knowledge, the Software does not infringe upon or violate any Intellectual Property Rights of any third party.

8.4 The Licensee shall promptly notify the Licensor of any claim or suit involving the Licensee in which said infringement is alleged, and, if the Licensor is affected, the Licensee shall permit the Licensor to have sole control of the defense and all related settlement negotiations.

9   Licensor's duties and responsibilities

The Licensor is bound to:

9.1 Further develop and maintain the Software;

9.2 Be available to give assistance within the Licensor's normal working hours;

9.3 Investigate and correct defects reported by the Licensee;

9.4 Send the Licensee updated when errors or defects are corrected. For defects of a less serious nature, updates will be distributed with later upgrades of the programme.

10   The Licensee's duties and responsibilities

The Licensee is bound to:

10.1 Utilise the latest version / release of the Software;

10.2 Prevent every form of copying the Software;

10.3 Return all software stated in this agreement should usage rights for some reason cease. Forwarding must take place by registered, insured, parcel post and be at the Licensor's premises within thirty days after usage rights have ceased.

11   Insurance

Each Software Dongle is valued R 6 000, and must be insured by the Licensee from the day of installation. This fee may increase each year and the licensee is responsible to confirm the current price. In the event of theft or loss, the programme dongle shall be replaced upon payment of the replacement fee. This payment must be made within fourteen days after the theft or loss. In the event of the dongle being damaged or deformed, the returned Software dongle will be replaced at R1 500.00

12   Breach and termination

12.1 Should either of the Parties breach any stipulation contained in the Agreement, and that breach is not due to force majeure, then the suffering party may:

12.1.1 terminate the Agreement; provided that the party to the Agreement who breached its obligations in terms thereof fails to remedy such breach within 7 (seven) calendar days after receiving a Notice from the other party to the Agreement, on expiry of this period; provided further that it confirms this termination, by way of a Notice to the other party, and claim all damages that it might have suffered as a result of that breach; or

12.1.2 it may claim specific performance of the Agreement from the other party to the Agreement and all damages that it might have suffered as a result of that breach.

12.2 Only in the event of a breach of contract may either of the Parties terminate the Agreement at any stage by giving the other three (3) months Notice of its intention to do so.

13   Validity

If any provision of this Agreement is found or held to be invalid or unenforceable, the validity and enforceability of all the other provisions of this Agreement will not be affected thereby.

14 Dispute resolution

14.1 If the Parties are unable to resolve any dispute resulting from this Agreement by means of joint co-operation or discussion between the individuals directly involved with the execution of this Agreement, within one week after a dispute arises or such extended time period as the Parties may in writing allow, then such a dispute shall be submitted to the most senior executives of the Parties who shall endeavor to resolve this dispute, within five (5) calendar days after it having been referred to them.

14.2 Should the dispute not be resolved in the aforesaid manner, then it shall be resolved by way of Court action in the Magistrate's Court that has jurisdiction over the person of the Defendant.

15 Governing law

The validity and interpretation of this Agreement will be governed by the laws of the Republic of South Africa.