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 [Country] 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 the [Country] of [COUNTRY], 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. **LICENSE**
	1. **Software License**

Licensor hereby grants to Licensee a perpetual, irrevocable, non-exclusive licence (the "License") 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 Annexures annexed to this Agreement (the "Annexures'').

* 1. **License Fee and Payment**

As consideration for the License, Licensee will pay Licensor the amounts set forth in Annexure A annexed hereto pursuant to the terms stated therein.

1. **LICENSED 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 Annexure B annexed hereto. Licensor is required to deliver to Licensee the number of copies of the programme specified in Annexure B, which shall be contained on machine-readable media which can be read by the hardware on which the programme is to be run (the "Hardware"), as specified in Annexure C annexed hereto. 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 Annexure B. Licensor is required to deliver to Licensee the number of copies of said Documentation as specified in Annexure B. 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 Program; and the Documentation is deemed to include all relevant commentary, including explanation, flow charts, algorithm and subroutine descriptions, memory and overlay maps and other documentation of the source code ("Commentary"). Licensor is required to deliver to 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 Annexure B, as well as the number of copies of the complete listing of the source code and Commentary as specified in Annexure B. Licensee will have the right, as part of the License, to make as many additional machine-readable or other copies of the source code, the listing thereof and Commentary for its own use as it may deem necessary. In the event of the dissolution, bankruptcy or insolvency of Licensor, Licensee shall own its copies of the Software.

* 1. **Source Code Escrow**

No later than the time of Licensor's delivery of the programme and Documentation to Licensee, as specified below, 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 Licensor corrects any defects in or provides any revision to, the programme under Section 7.2 hereof, or under any software maintenance agreement, 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 Annexure C. The computer programming language in which the Program, as delivered, will be written, and any compiler or other computer programme which, in addition to the operating system, must be present in order for the programme to function fully, are also specified in Annexure C. Unless expressly indicated in Annexure C, the addition or connection of other computer equipment to the Hardware will not adversely affect 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 Annexure 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**

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 Annexure C. After execution of this Agreement, Licensor shall promptly make any modifications to the Software called for by Annexure 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 Annexure C.

* 1. **Custom Modifications**

Licensor shall make certain modifications to the Software, prior to delivery of same to Licensee, as specified in Annexure 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 Annexure A. In the event the Software as modified hereunder is accepted, then Licensee shall be deemed the owner of such modifications, and Licensor shall not distribute the Software with such modifications to any other party unless it first agrees to pay 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 Licensor, and upon no less than [NUMBER] days prior notice to Licensee, Licensor shall deliver to Licensee's premises set forth in Annexure 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 Licensor, Licensee may, at no cost, postpone the delivery of the Software to a mutually agreed upon date no more than [NUMBER] days thereafter. 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 Licensor fails to make timely delivery of the Software as provided above, then Licensee may elect to cancel this Agreement, and Licensor shall immediately refund all sums previously paid to it by Licensee hereunder.

* 1. **Program Installation and Acceptance**

The licensee shall instal the programme on the Hardware as specified in Annexures C and E annexed hereto. The licensee shall conduct all of its own testing procedures on the programme as set forth in Annexure F annexed hereto. The successful completion of 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 Annexure B, then 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 Licensee may elect to cancel this Agreement and Licensor shall immediately refund all sums previously paid to it by Licensee hereunder.

1. **SCOPE OF USE**
	1. **Site License**

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

* 1. **Multiple Use Option**

Licensee will have the option to extend the licence to include simultaneous use of the programme at additional Sites (as defined above) within Licensee, which it may exercise in its sole discretion at any time and from time to time by tendering to Licensor payment pursuant to Annexure 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 set forth in Annexure A shall include all costs for the training of Licensee's employees on the use and operation of the programme on the Hardware as specified in Annexure G annexed hereto

including instruction in any necessary conversion of Licensee's data for such use.

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

Licensor hereby warrants and represents to Licensee as follows:

1. **Ownership**: Licensor is the owner of the Software or otherwise has the right to grant the licence to 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 Licensor;
2. **Business Requirements:** Licensor is fully aware of Licensee's business requirements and intended uses for the Software, including any set forth in Annexure 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 Licensee's acceptance of the Program, as specified above (the "Warranty Period") and for the term of any Software Maintenance Contract, the programme shall (i) be free from defects in material and workmanship under normal use and remain in good working order, and (ii) 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 Annexure B and on the Hardware and system software and other software set forth in Annexures C and E including updates or new releases to such Hardware, system software and other software, and interface with other programmes as required by Annexure 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 Annexure 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 set forth in Annexure 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 set forth in Annexure H;
7. **Remedies for Breach of Software Warranties:** In the event that the programme does not meet the above warranties, 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 set forth in said warranties;
8. **Service and Maintenance**: 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 so as to be able to perform in a competent and professional manner and that all work will be so performed;
9. **Service Warranty**: For the Warranty Period and the term of any Software Maintenance Contract, 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 Annexures, or which impairs Licensee's use thereof, or any other malfunction, defect or non-conformity in the Software, which shall be provided as follows: 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, Licensor shall immediately send at least one qualified and knowledgeable representative to Licensee's Site and said representative(s) will furnish continuous effort to remedy the failure, malfunction, defect or non-conformity.
	1. **Software Maintenance**
10. During the Warranty Period and for the term of any Software Maintenance Contract, Licensor shall promptly notify Licensee of any defects or malfunctions in the programme or Documentation which it learns from any source. 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 Licensee with corrected copies of same, without additional charge. Licensor's obligation hereunder will not be deemed to affect any other liability which it may have to Licensee.
11. Licensor shall provide to Licensee, without additional charge, copies of the programme and Documentation revised to reflect any enhancements to the Software made by 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.
	1. **Additional Support**

During the Warranty Period and for the term of any Software Maintenance Contract, Licensor shall provide to Licensee, without additional charge, all reasonably necessary telephone or written

consultation requested by Licensee in connection with its use and operation of the Software or any problems therewith. Telephone consultation shall be requested and provided only during Licensor's

normal business hours, and Licensee shall pay all long-distance telephone charges.

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

After the expiration of the Warranty Period, if Licensee elects, Licensor shall provide maintenance, additional support and enhancements in connection with the Software, pursuant to the terms of the

Software Maintenance Contract set forth in Annexure I annexed hereto. The initial one-year maintenance fee is as set forth in Annexure A. Licensor grants to Licensee the option to renew for [NUMBER] year terms after the initial one-year term, for a fee to be negotiated annually by Licensee and Licensor, but in no event exceeding the fee charged for the preceding year by more than [%]. As part of the Software Maintenance Contract, Licensor shall make available to Licensee updates and enhancements to the Software which Licensor has installed at its other customers' locations. For each update or enhancement, 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 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 Licensee's request at Licensor's standard time and materials rates.

* 1. **Licensee Modifications**

Licensee will have the right, in its own discretion, to independently modify the Software for its own use, through the services of its own employees or of independent contractors, provided that same agree not to disclose any part of the Software or otherwise violate Licensor's proprietary rights. Such modifications, if approved by Licensor, shall not affect 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 Licensee, provided that Licensee will not be deemed to have obtained any right thereby to distribute the Program. Licensor shall not incorporate any such modifications into its software for distribution to third parties unless it first agrees to pay Licensee a reasonable royalty, pursuant to such reasonable terms as the parties may agree upon.

* 1. **Indemnity**

Licensor, at its own expense, shall indemnify and hold harmless 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. Licensee may, at its own expense, assist in such defence if it so chooses, provided that, as long as Licensor can demonstrate sufficient financial resources, Licensor shall control such defence and all negotiations relative to the settlement of any such claim. The licensee shall promptly provide Licensor with written notice of any claim which 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, Licensor shall have the obligation to, at its expense, (i) modify the infringing Software without impairing in any material respect the functionality or performance, so that it is non-infringing, (ii) procure for Licensee the right to continue to use the infringing Software, or (iii) replace said Software with equally suitable, non-infringing software. If none of the foregoing alternatives is available to Licensor, Licensee shall receive repayment of all monies paid to Licensor, and Licensor shall accept the return of the Software at its expense, once Licensee has arranged for the continuation of the functions performed thereby. Licensor agrees to indemnify Licensee for any liability or expense due to claims for personal injury or property damage (i) arising out o the furnishing or performance of the Software or the services provided hereunder or (ii) arising out of the fault or negligence of 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 the course of 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**

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

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

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 Licensor and, except as expressly authorised herein, Licensee shall not disclose or distribute same to any third party without Licensor's prior written consent, which consent shall not be unreasonably withheld. Notwithstanding the preceding sentence, Licensee may add its own copyright or other proprietary notice to any copy of the programme or Documentation which contains modifications to which Licensee has ownership rights pursuant to 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 enters into an agreement 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**

Licensee may assign this agreement to any subsidiary or affiliate or entity owned or controlled by Licensee without regard to the jurisdiction of in company 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 Licensor's consent, upon notice to Licensor. Licensor shall not assign this Agreement without 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 set forth 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 the [Country] of [COUNTRY].

1. **CONSENT TO JURISDICTION, VENUE AND SERVICE**

Licensor consents and agrees that all legal proceedings relating to the subject matter of this Agreement shall be maintained in courts sitting within the State of [COUNTRY], and 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 Annexure attached hereto is held invalid or otherwise unenforceable, the enforceability of the remaining provisions of this Agreement and the Annexures 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 Annexures attached hereto, including any additional terms and conditions set forth in Annexure 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 Annexure, the terms of the Annexure shall control. This Agreement,

including the Annexures attached hereto, sets forth the entire understanding of the parties as to the Software described in Annexure A and may not be modified except in writing executed by both parties.

1. **REMEDIES**

The rights and remedies of Licensee set forth in this Agreement are not exclusive and are in addition to any other rights and remedies available to it in law or in 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

**ANNEXURE A**

**FEES AND PAYMENT TERMS**

**ANNEXURE B**

**SOFTWARE DESCRIPTION**

**ANNEXURE C**

**HARDWARE AND OPERATING SYSTEM**

**ANNEXURE D**

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**TRAINING TO EMPLOYEES**

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**ANNEXURE I**

**SOFTWARE MAINTENANCE CONTRACT**