



LICENSE AGREEMENT

entered into between:

PATERVA (PTY) LIMITED

(Registration number: 2008/005705/07)

Physical address: **15 Krige Street, Irene, Centurion, South Africa**

(hereinafter referred to as "*the Licensor*")

and

[]

(Registration number: [])

Physical address: []

(hereinafter referred to as "*the Licensee*")



RECITALS

WHEREAS, the Licensor has developed the Software and now desires to grant Licensee a license to use the Software.

WHEREAS, Licensee wishes to use the Software under the conditions set forth in this Agreement

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 "Agreement"** shall mean this written document together with all written appendices, annexures, schedules, exhibits or amendments attached to it from time to time;
- 1.2 "Commencement Date"** shall mean [];
- 1.3 "Confidential Information"** shall mean:
- 1.3.1** any information of whatever nature, which has been or may be obtained by either of the Parties from the other, whether in writing or in electronic form or pursuant to discussions between the Parties, or which can be obtained by examination, testing, visual inspection or analysis, including, without limitation, scientific, business or financial data, know-how, formulae, processes, designs, sketches, photographs, plans, drawings, specifications, sample reports, models, customer lists, price lists, studies, findings, computer software, inventions or ideas;
- 1.3.2** analyses, concepts, compilations, studies and other material prepared by or in possession or control of the recipient which contain or otherwise reflect or are generated from any such information as is specified in this definition;
- 1.3.3** any dispute between the Parties resulting from this Agreement;
- 1.3.4** the terms and conditions of this Agreement.
- 1.4 "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;
- 1.5 "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;
- 1.6 "License Rights"** shall mean a non-transferable and non-exclusive right granted to the Licensee to use the Software and Software Documentation in accordance with the terms and conditions of this Agreement;
- 1.7 "License Fee"** shall mean the amount agreed between the Parties subsequent to receipt of Licensor's quotation ;
- 1.8 "Parties"** shall mean both the Licensor and the Licensee;
- 1.9 "Release"** means any version of the Software made available by the Licensor;
- 1.10 "Software"** shall mean the computer programs (specified modules) and server base as agreed to between parties subsequent to receipt of Licensor's quotation;
- 1.11 "Software Documentation"** shall mean the written document(s) containing detailed instructions pertaining to the use of the Server and setting out the operation of the Server;

- 1.12 "Updates"** means any update or modification of the Software that the Licensor makes generally available to its licensees at no additional license fee from time to time.
- 1.13** The clause headings in this Agreement have been inserted for convenience only and will not be taken into consideration in the interpretation of this Agreement.
- 1.14** Any reference in this Agreement to the singular includes the plural and vice versa.
- 1.15** Any reference in this Agreement to natural persons includes legal persons and references to any gender include references to the other genders and vice versa.

2. Grant and nature of license

- 2.1. The Licensor herewith grants the License Rights to the Licensee on the terms and conditions set out in this Agreement.
- 2.2. The Licensee shall limit the Use to its employees or authorised contractors;
- 2.3. The Licensee shall not, nor allow any third party to:-
- 2.3.1. copy nor permit any party to copy the Software or Software Documentation, except to make sufficient copies solely for backup or archival purposes.
 - 2.3.2. modify, de-compile, disassemble or otherwise reverse-engineer the Software or any Software control features, or attempt to do any of these; provided that this stipulation shall not be applicable where de-compilation is permitted by law;
 - 2.3.3. provide, sublicense, transfer, lease, lend, use for timesharing or service bureau purposes or facility management or outsourcing services, or otherwise use or allow others to use the Software for the benefit of third parties, including but not limited to data processing services to third parties.
 - 2.3.4. Use the Software for any unlawful purpose or obtain information via the Server for subsequent unlawful activities (including but not limited to copyright infringement, breach of third party terms and conditions, unsolicited communications or infringement of any other third party rights).
- 2.4. The Licensee shall allow the Licensor, upon reasonable notice, access to its premises to audit the Licensee's compliance with the Agreement.

3. Commencement and duration

- 3.1. This Agreement shall commence on the Commencement Date.
- 3.2. The Agreement will continue on a perpetual basis, unless terminated earlier in accordance with the provisions of the Agreement.

4. Custom Modifications

- 4.1. All custom modifications to the Software shall be undertaken by Licensor at its then current time and materials charges. For each custom modification requested, Licensee shall provide written specifications to Licensor, which shall be mutually agreed upon prior to commencement of such custom modification effort.

5. Software Support Services

The Licensor shall provide, subsequent to payment of agreed License Fees by Licensee, the following Software Support Services:-

- 5.1. maintenance provided through telephone or electronic support;

- 5.2. correction of any defect / error in the Software program that materially and adversely affects the use of the Software as described in Software Documentation:
 - 5.2.1. If the Licensee suspects that an error exists within the Software then the Licensee shall within 10 (ten) days of discovering the same notify Licensor and provide Licensor with evidence of such error. Following receipt of such notification Licensor shall determine whether an error exists in the current release of the Software. If an error does not exist in the current release then Licensor shall inform the Licensee accordingly and at the request of the Licensee deliver to the Licensee a copy of the current release. If an error does exist then Licensor shall classify the error according to its severity;
 - 5.2.2. With respect to error that causes the Software to be unusable, or causes an element of the Software to operate in such a way as to make it unusable Licensor shall endeavour (best efforts) to correct such error, or provide a satisfactory workaround, within a reasonable timescale and upon such correction being completed deliver to the Licensee at the discretion of Licensor either a new Release of the Software or corrected elements of the Software together with appropriate instructions for use of the corrected elements of the Software. Other errors (errors of minor or cosmetic nature that do not have a significant impact on the use of the Software) will be incorporated by Licensor into new Releases of the Software which will become available as described in clause 5.5 below;
- 5.3. delivery of bug fixes or workarounds (best efforts), limited to the current or Software release as referred to under clause 5.6.1 below;
- 5.4. Software Updates:-
 - 5.4.1. Licensor shall from time to time make available to the Licensee Updates of the Software. Subsequent to Update request from Licensee, Licensee shall be entitled to download Updates from Licensor's designated server(s). From time to time the Licensor may notify the Licensee of Updates; and
- 5.5. New Releases:-
 - 5.5.1. Licensor shall from time to time make available to the Licensee New Releases of the Software. Subsequent to New Release request from Licensee, Licensee shall be entitled to download New Release from Licensor's designated server(s). From time to time the Licensor may notify the Licensee of New Releases;
 - 5.5.2. Licensor may classify a particular Release of the Software as Withdrawn or a Release for use with a particular level of operating or development software or hardware model as Withdrawn by giving to the Licensee 60 (sixty) days written notice of such classification.
- 5.6. The Licensee is not obliged to download an Update or New Release made available by the Licensor, however If the Licensee omit to download the available Updates and / or New Release, the Licensor shall:-
 - 5.6.1. In terms of New Releases only continue support and maintenance of the version of the licensed Software which the Licensee is using until the expiry of 6 (six) months from the date upon which the New Release was made available by the Licensor; and
 - 5.6.2. In terms of an Update limit its liability under this Agreement in terms of fixing of errors
- 5.7. Licensee shall be responsible for using such new Updates and / or New Releases in accordance with the the terms set out herein;

6. Payment

- 6.1. In consideration of the License, being granted, the Licensee shall pay the Licensor the License Fee, as per the agreed quotation within 30 (thirty) days from date of invoice into the Licensor's designated account. The Licensor shall invoice any additional costs reasonably incurred by the Licensor in the delivery of the Software as they incurred, subsequent to agreement between the parties in respect of the rates.
- 6.2. Payments shall be made by Licensee to Licensor in full without any right of set-off or deduction.
- 6.3. If Licensee fails to make any payment or portion of a payment due in terms of this Agreement, the Licensor may, without prejudice to Licensor's rights in terms of this Agreement or at law, charge interest on any unpaid amount from the date the account became due until the date of payment, at the prevailing prime overdraft rate of any South African Bank, plus 2% (two per centum);
- 6.4. 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 organisation (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.

7. Warranties

- 7.1. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE SOFTWARE IS FURNISHED TO LICENSEE "AS IS" WITHOUT ANY WARRANTY, CONDITIONS, REPRESENTATIONS OR OTHER TERMS REGARDING THE SOFTWARE. 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. TO THE EXTENT PERMITTED BY LAW THE LICENSOR DISCLAIMS AND EXCLUDES ALL WARRANTIES, REPRESENTATIONS, CONDITIONS AND OTHER TERMS OF ANY KIND, EXPRESS OR IMPLIED OR WHETHER ARISING BY STATUTE, COMMON LAW OR OTHERWISE.
- 7.2. THE PARTIES AGREE THAT THE SOFTWARE'S FAILURE TO PERFORM IN ACCORDANCE WITH THE SOFTWARE DOCUMENTATION OR ANY OTHER SPECIFICATIONS SHALL NOT BE CONSIDERED A FAILURE OF THE ESSENTIAL PURPOSE OF THE REMEDIES CONTAINED HEREIN. THE ENTIRE RISK OF THE SOFTWARE'S QUALITY AND PERFORMANCE IS WITH LICENSEE.
- 7.3. IMPORTANT: WHERE SOFTWARE LINKS TO -, EXTRACT FROM - OR INTEGRATE WITH ANY OTHER THIRD PARTY CONTENT AND/OR SERVICES, LICENSOR MAKES NO REPRESENTATION OR WARRANTY THAT SAID USE OF THE SOFTWARE SHALL BE AUTHORISED BY LAW IN THE PARTICULAR JURISDICTION OR AUTHORISED BY SAID THIRD PARTY OR THAT THIRD PARTY CONTENT AND/OR SERVICES WILL BE AVAILABLE TO LICENSEE.

8. Intellectual Property Rights

- 8.1. The Licensee acknowledges and agrees that all Intellectual Property Rights used or embodied in or in connection with the Software are and will remain the sole property of the Licensor and its licensors, and nothing in this Agreement should be construed as transferring any aspects of such rights to Licensee or any other third party.
- 8.2. 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.
- 8.3. Licensee undertakes not to encumber or dispose of the Software or permit the Software to be encumbered or attached by operation of law.

9. Indemnities

- 9.1. The Licensee hereby indemnifies Licensor against any claim for alleged infringement of any intellectual property right or any other right of a third party, arising out of the use of the Software by Licensee.
- 9.2. *Third Party services and content:* The Software may make use of, or have the ability to make use of, link to or integrate with transform application servers which could use or have access to third party content or services. The availability of the content or services is at the sole discretion of the third party service providers and may be subject to certain terms and conditions. Licensee shall ensure that it abide by those terms and conditions. Licensee indemnify and hold Licensor and its licensors free from all claims, damages and expenses of whatsoever nature that may be made against Licensor and / or its licensors by a third party as a result of the use of the Software.
- 9.3. In the event the Software is held by a court of competent jurisdiction to constitute an infringement of any patent or copyright and its use is enjoined, Licensor shall, at its sole option, either; (i) procure for Licensee the right to continue use of the Software; (ii) provide a modification to the Software so that its use becomes non-infringing; or (iii) replace the Software with software which is substantially similar in functionality and performance. If none of the foregoing alternatives is reasonably available to Licensor, Licensor shall refund the License fees paid by Licensee for any such Software, pro-rated over a 1 (one) year period from the Commencement Date.

10. Limitation of liability

- 10.1. Except as provided for in clause 9.3 above and to the maximum extent permitted by applicable law, Licensor shall not be responsible or liable with respect to any subject matter of the Agreement or any attachment, Software order, schedule or terms and conditions related thereto under any contract, negligence, strict liability or other theory for; (a) damages for loss or inaccuracy of data or cost of procurement of substitute goods, services or technology; (b) any direct, indirect, incidental or consequential damages, loss, costs or expenses, including but not limited to loss of data, anticipated savings, goodwill and/or profits; or (c) any matter beyond its reasonable control, or (d) any damages, expenses or losses as a result of any third party claim where Licensee has utilised the Software to infringe any third party right, and Licensee shall keep Licensor fully and effectively indemnified against any such loss of, damages or expenses whatsoever.

11. Security and Control

- 11.1. The Licensee shall during the continuance of the License:
- 11.1.1. Effect and maintain adequate security measures to safeguard the Software from access or use by any unauthorised persons;
 - 11.1.2. Keep the Software and Software Documentation under the Licensee's effective control;

12. Breach and termination

- 12.1. Either party may terminate this Licence at any time on written notice to the other if the other:
- 12.1.1. is in material or persistent breach of any of the terms of this Licence and either that breach is incapable of remedy, or the other party fails to remedy that breach within 30 (thirty) days after receiving written notice requiring it to remedy that breach; or
 - 12.1.2. is unable to pay its debts, or becomes insolvent, or is subject to an order or a resolution for its liquidation, administration, winding-up or dissolution (otherwise than for the purposes of a solvent amalgamation or

reconstruction), or has an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer appointed over all or any substantial part of its assets, or enters into or proposes any composition or arrangement with its creditors generally, or is subject to any analogous event or proceeding in any applicable jurisdiction.

12.2. On termination for any reason:

12.2.1.all rights granted to the Licensee under this licence shall cease;

12.2.2.the Licensee shall cease all activities authorised by this licence;

12.2.3.the Licensee shall immediately pay to the Licensor any sums due to the Licensor under this licence; and

12.2.4.the Licensee shall immediately destroy or return to the Licensor (at the Licensor's option) at Licensee's costs all copies of the Software then in its possession, custody or control and, in the case of destruction, certify to the Licensor that it has done so.

12.3. The Licensor further has the right to suspend, without any prior notification, any or all of the Support services as per clause 5 above, where Licensee has violated any third party right;

12.4. Either of the Parties may terminate the Agreement at any stage by giving the other three (3) months Notice of its intention to do so.

12.5. Any termination of this Agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

13. Confidentiality

13.1. The Parties shall hold in confidence all Confidential Information received from each other and not divulge the Confidential Information to any person, including any of its employees, save for employees directly involved with the execution of this Agreement.

13.2. The Parties shall prevent disclosure of the Confidential Information, except as may be required by law.

13.3. The Licensee shall safeguard and protect the Confidential Information of the Licensor from theft, piracy or unauthorised access in a manner at least consistent with the protections licensee uses to protect its own most confidential information

13.4. Within six (6) months after the termination of this Agreement, for whatever reason, the recipient of Confidential Information shall return same or at the discretion of the original owner thereof, destroy such Confidential Information, and shall not retain copies, samples or excerpts thereof.

13.5. It is recorded that the following information will, for the purpose of this Agreement, not be considered to be Confidential Information:

13.5.1.information known to either of the Parties prior to the date that it was received from the other party; or

13.5.2.information known to the public or generally available to the public prior to the date that it was disclosed by either of the Parties to the other; or

13.5.3.information which becomes known to the public or becomes generally available to the public subsequent to the date that it was disclosed by either of the Parties to the other, through no act or failure to act on the part of the recipient of such Information; or

13.5.4.information which either of the Parties, in writing, authorises the other to disclose.

14. Relationship

This Agreement does not constitute either of the Parties an agent or legal representative of the other for any purposes whatsoever and neither of the Parties shall be entitled to act on behalf of, or to represent the other unless duly authorised thereto in writing.

15. Dispute resolution

15.1. 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 endeavour to resolve this dispute, within five (5) calendar days after it having been referred to them.

15.2. Should the dispute not be resolved in the aforesaid manner, then it shall be resolved by way of arbitration, in accordance with the provisions contained in this Agreement.

16. Arbitration

16.1. Any dispute referred to arbitration pursuant to clause 15 above shall be determined by arbitration in terms of this clause.

16.2. This clause shall not preclude any Party from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.

16.3. The arbitration shall be held at Pretoria in the Republic of South Africa with only the legal or other representatives of the Parties to the dispute present thereat, in terms of the Arbitration Act, No 42 of 1965, it being the intention that the arbitration shall be held and completed as soon as possible.

16.4. Should the Parties fail to agree on an arbitrator within 14 (fourteen) days after the giving of notice in terms of 15.2, the arbitrator shall be appointed at the request of either Party to the dispute by the President for the time being of the Law Society of the Northern Province;

16.5. The decision of the arbitrator shall be final and binding on the Parties to the dispute and may be made an order of the court referred to in 16.6 at the instance of any of the Parties to the dispute;

16.6. The Parties hereby consent to the jurisdiction of the North Gauteng High Court of South Africa in respect of the proceedings referred to in 16.2;

16.7. The Parties agree to keep the arbitration including the subject matter of the arbitration and the evidence heard during the arbitration confidential and not to disclose it to anyone except for purposes of an order to be made in terms of 16.5;

16.8. The provisions of this clause:

16.8.1.constitute an irrevocable consent by the Parties to any proceedings in terms hereof and no Party shall be entitled to withdraw therefrom or claim at any such proceedings that it is not bound by such provisions;

16.8.2.are severable from the rest of this Agreement and shall remain in effect despite the termination of or invalidity for any reason of this Agreement.

16.8.3.Each party will bear their own costs of arbitration.

- 16.9. The "arbitration" clause in this Agreement shall be severable from the rest of this Agreement and therefore shall remain effective between the Parties after this Agreement has been terminated.

17. Domicilium

- 17.1. Notices. The parties elect their respective addresses as per the cover page as their *domicilium citandi et executandi* for the purpose of serving any notice and for any other purpose arising from this Agreement.

17.1.1. Either Party shall be entitled from time to time, by written notice to the other, to vary its address to any other address which is not a post office box or poste restante.

17.1.2. Any notice to either party which is -

17.1.2.1. sent by prepaid registered post in a correctly addressed envelope to the address specified under the existing domicilium, shall be deemed to have been received, unless the contrary is proved, within 14 (fourteen) days from the date on which it was posted; or

17.1.2.2. delivered to the party by hand, shall be deemed to have been received on the day of delivery, provided that it has been delivered to a responsible person during ordinary business hours; or

17.1.2.3. sent by fax to a party at the telefax numbers specified above, shall be deemed to have been received, unless the contrary is proved, within 4 (four) hours of transmission if it is transmitted during normal business hours of the receiving party or within 12 (twelve) hours of the first business day of the receiving party after it is transmitted, if it is transmitted outside those business hours; or

17.1.2.4. Sent by Data messages (as defined in the Electronic Communications and Transactions Act 25 of 2002) from one party to another shall be deemed to be received by receiving party only when receiving party responds thereto / acknowledges receipt thereof, and for the purposes of this clause an auto-response shall not be a response by the receiving party;

- 17.2. Notwithstanding anything to the contrary contained in this clause, a written notice or other communication actually received by either party and for which written receipt has been obtained, shall be adequate written notice or communication to it notwithstanding that the notice was not sent to or delivered at its chosen address.

18. Force majeure

- 18.1. Neither of the Parties shall be liable for a failure to perform any of its obligations insofar as it proves:

18.1.1. that the failure was due to an impediment beyond its control;

18.1.2. that it could not reasonably be expected to have taken the impediment and its effects upon the party's ability to perform into account at the time of the conclusion of this Agreement; and

18.1.3. that it could not reasonably have avoided or overcome the impediment or at least its effects.

- 18.2. An impediment, as aforesaid, may result from events such as the following, this enumeration not being exhaustive:

18.2.1. war, whether declared or not, civil war, civil violence, riots and revolutions, acts of sabotage;

- 18.2.2.natural disasters such as violent storms, cyclones, earthquakes, tidal waves, floods, destruction by lightning;
- 18.2.3.explosions, fires, destruction of machines, factories and any kind of installations;
- 18.2.4.boycotts, strikes and lock-outs of all kinds, go-slows, occupation of factories and premises and work stoppages;
- 18.2.5.acts of authority, whether lawful or unlawful, apart from acts from which the party seeking relief has assumed the risk by virtue of any other provisions of this Agreement.
- 18.3. For the purposes of this clause "impediment" does not include lack of authorisations, licences, permits or approvals necessary for the performance of this Agreement and to be issued by the appropriate public authority.
- 18.4. Relief from liability for non-performance by reason of the provisions of this clause shall commence on the date upon which the party seeking relief gives Notice of the impediment relied upon and shall terminate upon the date upon which such impediment ceases to exist; provided that if such impediment continues for a period of more than sixty (60) days either of the Parties shall be entitled to terminate this Agreement.

19. Entire agreement and variations

- 19.1. This Agreement constitutes the whole agreement between the Parties and supersedes all prior verbal or written agreements or understandings or representations by or between the Parties regarding the subject matter of this Agreement, and the Parties will not be entitled to rely, in any dispute regarding this Agreement, on any terms, conditions or representations not expressly contained in this Agreement.
- 19.2. No variation of or addition to this Agreement will be of any force or effect unless reduced to writing and signed by or on behalf of the Parties.
- 19.3. Neither party to this Agreement has given any warranty or made any representation to the other party, other than any warranty or representation which may be expressly set out in this agreement.

20. Assignment, cession and delegation

Neither of the Parties shall be entitled to assign, cede, delegate or transfer any rights, obligations, share or interest acquired in terms of this Agreement, in whole or in part, to any other party or person without the prior written consent of the other, which consent shall not unreasonably be withheld or delayed.

21. Relaxation

No indulgence, leniency or extension of a right, which either of the Parties may have in terms of this agreement, and which either party ("the grantor") may grant or show to the other party, shall in any way prejudice the grantor, or preclude the grantor from exercising any of the rights that it has derived from this Agreement, or be construed as a waiver by the grantor of that right.

22. Waiver

No waiver on the part of either party to this Agreement of any rights arising from a breach of any provision of this Agreement will constitute a waiver of rights in respect of any subsequent breach of the same or any other provision.

23. Severability

In the event that any of the terms of this Agreement are found to be invalid, unlawful or unenforceable, such terms will be severable from the remaining terms, which will continue to be valid and enforceable.

24. Governing law

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

SIGNED at _____ on the _____ day of _____ 2009

PATERVA (PTY) LTD

- who warrants his/her authority to sign

NAME IN PRINT: Roelof Temmingh

DESIGNATION: Managing director

SIGNED at _____ on the _____ day of _____ 2009

LICENSEE

- who warrants his/her authority to sign

NAME IN PRINT: _____

DESIGNATION: _____