

Object Code License Agreement

End User License Agreement (EULA)

Release Version 20080101

The Parties to this Agreement are:

[*Datatex Dynamics CC*] (the Licensor)

[_____] (the Licensee)

Background

The Licensor agrees to license the Software as defined below to the Licensee, in accordance with these terms and conditions and the Licensee acknowledges that it is licensed to use such Software subject to these terms and conditions ('License').

1. INTERPRETATION

In this Agreement, unless a contrary intention appears –

- 1.1 the clause headings have been inserted for purposes of convenience only and will not be taken into consideration in its interpretation;
- 1.2 any reference to (i) the singular includes the plural and vice versa, (ii) any gender includes the other genders and (iii) a natural person includes a juristic person, including quasi juristic persons, partnerships, trusts or any other bodies of persons (whether natural or juristic) whether incorporated or unincorporated, not included in the above, and vice versa;
- 1.3 the rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply;
- 1.4 unless the context indicates a contrary intention, the words and expressions defined in clause 2 shall, throughout, bear the meanings assigned to them in that clause 2 and related expression shall bear corresponding meanings;
- 1.5 any reference to "**days**" shall be construed as being a reference to calendar "**days**" unless qualified by the word "**business**" in which instance a "**business day**" shall be any day other than a Saturday and a Sunday and/or a public holiday as gazetted by the Government of the Republic of South Africa from time to time. Any reference to "**business hours**" shall be construed as being the hours between 08h30 and 17h00 on any business day;
- 1.6 the word "**include**" and "**including**" means "**include without limitation**" and "**including without limitation**". The use of the word "**including**" followed by a specific example/s shall not be construed as limiting the meaning of the general wording preceding it;

- 1.7 terms other than those defined will be given their plain English meaning, and those terms, acronyms, and phrases known in the Information Technology industry will be interpreted in accordance with their generally accepted meanings;
- 1.8 defined terms appearing in title case shall be given the meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with the ordinary meaning as qualified by clause 1.7 and shall, unless the context otherwise indicates, include the term as defined;
- 1.9 to the extent that the parties have not completed items in the Schedules, unless otherwise stated in the Schedules, that item will be taken to be 'not applicable' for the purpose of this Agreement.

2. DEFINITIONS

In this Agreement, unless inconsistent with or otherwise indicated by the context, the following terms will have the meanings assigned to them in this clause:

- 2.1 “**Commencement Date**” means the date that the Licensee signs this Agreement;
- 2.2 “**Licensed Computer System**” means the computer configuration and operational environment specified in Schedule “1” on which the Software is licensed to run;
- 2.3 “**Manual**” means the documentation in both paper based and electronic format for aiding the use of the Software that accompanies the Software and any Updates or Upgrades, as specified in Schedule “1” to this Agreement;
- 2.4 “**Software**” means the software products listed in Schedule “1” including all their Updates, Upgrades and other subsequent modifications, and their related Manuals and other documentation, including where applicable Third Party Software;
- 2.5 “**Third Party Software**” means all software owned by a third party, but legally licensed for distribution by the Licensor as part of the Software, as specified in Schedule “1”;
- 2.6 “**Trial Period**” means the period of time, calculated from the date the first recording is made by the Licensee under this Agreement until the last date of the month following the month of the first recording;
- 2.7 “**Updates**” means (i) corrections to inherent errors / faults in the Software and (ii) changes/improvements made to the Software by the Licensor after installation of the

Software, which result in the addition of function/s and/or feature/s not present in the Software prior to the introduction of the changes/improvements;

- 2.8 “**Upgrades**” mean a rewrite of the Software or Update which result in a major version change to the Software or Update.

3. LICENSE TO USE THE SOFTWARE

- 3.1 The Licensor grants the Licensee a non-exclusive, non-transferable license to use the Software in object code, including where appropriate Third Party Software, in accordance with these terms and conditions including its termination provisions.
- 3.2 The Licensee is licensed to use the Software only for its own internal purposes on the Licensed Computer System for the number of users specified in Schedule “1”, included in the specified number are the employees and sub-contractors who need to access and use the Software.
- 3.3 Should the Licensee wish to upgrade or change the Licensed Computer System, the Licensee must obtain the prior written consent from the Licensor.. The details in Schedule “1” to this License will be amended accordingly.
- 3.4 If the Licensee sells or disposes of the Licensed Computer System, it will ensure that all copies of the Software have previously been deleted.
- 3.5 The Licensee agrees to comply with any additional Third Party Software conditions notified to it on or before delivery of any Third Party Software and to indemnify the Licensor against any action by a Third Party Software owner as a result of any breach by the Licensee of such conditions.

4. DURATION

- 4.1 This License commences on the Commencement Date.
- 4.2 The License will subsist for the Trial Period, whereafter the functionality of the Software shall automatically cease, unless the Licensee pays the license fee in terms of the provisions of clause 9. However, the Licensee agrees to be bound by the terms of this Agreement until such time that the Licensor has uninstalled the Software. In the event of the Licensee not wishing to use the Software beyond the Trial Period, the Licensee expressly agrees (i) to allow the Licensor immediate access to the premises to remove the Software and Licensed Computer System at a time notified to the Licensee prior to the removal and (ii) to waive any rights that it

may have to any data found on the Licensed Computer System.

- 4.3 Once the license fee for the Software has been paid, the Licensee shall be entitled to use the Software in perpetuity, subject to the Licensor's right to cancel this Agreement in terms of clause 14.
- 4.4 The Software License provisions are independent of any Software maintenance and support provisions, to the extent that the Licensee's License to use the Software will survive any termination of the Licensor's obligations to support the Software. Similarly Software supplied without support will be validly licensed.
- 4.5 Termination of these License provisions will automatically terminate any support obligations by the Licensor for the Software.

5. SUPPLY, INSTALLATION AND ACCEPTANCE

- 5.1 The Software will be preinstalled on the Licensed Computer System before delivery to the Licensee takes place.
- 5.2 The programs comprising the Software will be supplied in object code, together with one electronic copy of any related documentation.
- 5.3 Supply of the Licensed Computer System and Software will be made to the address of the Licensee shown in this Licence on the date agreed between the parties. The Licensor will make all reasonable efforts to keep to the delivery date agreed with the Licensee but under no circumstances will the Licensor be liable for damages or costs arising from any delay in delivery.
- 5.4 The Licensee shall run commissioning tests after delivery to ensure that the Software is installed correctly. The Licensee will be required to sign off the installation by completing Schedule "2" to the Agreement before expiry of the Trial Period.
- 5.5 Completion of Schedule "2" shall be deemed acceptance of the Software. This is applicable to Software, and also to Updates and Upgrades.

6. TRAINING

- 6.1 The Licensor shall provide the Licensee with on site training for 2 days on a time and date to be agreed between the Parties.

- 6.2 No additional fee over and above the license fees shall be payable for the training provided in terms of this clause 6.
- 6.3 In the event that the Licensee requires additional training from the Licensor, the Parties will enter into a separate agreement for the additional training. The Licensor shall not be under any obligation to enter into such agreement for additional training with the Licensee.

7. RIGHTS IN THE SOFTWARE

- 7.1 No title or rights of ownership, copyright or any other intellectual property in the Software, including all Updates, Upgrades or any other modifications of the Software, is or will be transferred to the Licensee.
- 7.2 The Licensee understands that the Software contains proprietary information, and agrees that it will not provide or otherwise make any of the Software and/or Manuals or other related documentation available for any reason to any other person, firm, company or organisation, other than a third party independent contractor licensed to use the Software.
- 7.3 The Licensee will not copy or permit the Software to be copied for any reason whatsoever.
- 7.4 The Licensee will ensure that all of its relevant employees, agents and sub-contractors are advised that the Software constitutes confidential information and that all intellectual property rights in it are the property of the Licensor, and the Licensee will ensure that its employees, agents and sub-contractors comply with all of the terms and conditions of this clause.
- 7.5 Recognising that the Software has significant commercial value to the Licensor, the Licensee agrees to indemnify the Licensor in respect of any losses or expenses incurred by the Licensor or Licensee as a result of the unauthorised use of the Software by any third party, whether through misuse of the Software by the Licensee or through any other breach by the Licensee of this Licence or through the negligence of the Licensee or through any other cause.

8. LICENSEE UNDERTAKINGS AND RESTRICTIONS ON USE

- 8.1 The Licensee acknowledges that it is licensed to use the Software only in accordance with the express terms of this Licence.
- 8.2 The Licensee undertakes and agrees:
- 8.2.1 that it will use the Software only for the purposes of its business and not for any form of commercial exploitation;
 - 8.2.2 it will not decompile, disassemble, reverse engineer or otherwise attempt to derive the source code from the object code;
 - 8.2.3 not to sell, rent, lease, license, sub-license, display or otherwise transfer the Software to, or permit the use of the Software by, any third party;
 - 8.2.4 not to modify or create derivative systems based on the Software, whether in whole or in part;
 - 8.2.5 to use reasonable care and protection to prevent the unauthorised use, copying, publication or dissemination of the Software;
 - 8.2.6 not to use the Software in any manner that is not permitted in terms of this Agreement;
 - 8.2.7 to satisfy itself that the Software meets the needs of its business. It is the sole responsibility of the Licensee to determine that the Software is ready for operational use in the Licensee's business before it is so used;
 - 8.2.8 to allow the Licensor to study its information and data used with the Software for the purpose of rectifying any problems with the Software;
 - 8.2.9 to ensure that the operating system and compiler and any other software with which the Software will be used is either the property of the Licensee or is legally licensed to the Licensee for use with the Software. The Licensee will indemnify the Licensor in respect of any claims by third parties and all related costs, expenses or damages in the event of any alleged violation of third party proprietary rights which results in any claims against the Licensor.
- 8.3 The Licensee warrants that the Software and all copies will remain under its control and that it will take all reasonable precautions to safeguard the Software against unauthorised use.

- 8.4 The Licensee hereby acknowledges that it is the best judge of the value and importance of the data held on the Licensed Computer System and that it takes sole responsibility for instituting and operating all necessary backup procedures (for its own benefit) to ensure that data integrity can be maintained in the event of loss of data for any reason.

9. LICENSE FEE AND PAYMENT TERMS

- 9.1 In order to use the Software beyond the Trial Period, the Licensee must obtain a license key from the Licensor, which license key shall only be issued as soon as reasonably possible after payment of the license fee has been received by the Licensor.
- 9.2 The licence fee as set out in Schedule "1" will be paid to the Licensor by the Licensee or authorised reseller of the Software by way of direct deposit or electronic fund transfer and proof of payment must be faxed or emailed to the Licensor to 021-5924077 or sales@datatex.co.za
- 9.3 The Licensor shall not charge any additional fee for an Update, but the Licensor or any other authorised third party service provider may charge a fee agreed with the Licensee prior to installation for the installation of the Update. Such fee shall include but not be limited to actual time spent to install the Update, travelling costs, accommodation costs and other related expenses.
- 9.4 The Licensor reserves the right in its own and unfettered discretion to charge an additional fee for any Upgrades issued.
- 9.5 All fees and charges are exclusive of Value Added Tax and any similar taxes. All such taxes are payable by the Licensee and will be applied in accordance with South African legislation in force at the tax point date.

10. LICENSOR'S WARRANTIES

- 10.1 The Licensor warrants that it has good title or is otherwise authorised to license the Software to the Licensee.
- 10.2 The Licensor represents and warrants to the Licensee that at the time of delivery of the Software to the Licensee it is a complete, accurate and up-to-date copy of the current release.

- 10.3 The Software is designed to conform to the Software product specification applicable at the time of the Licensee's order. However, the Licensor does not warrant that the Software will work without interruption or that it is error-free.
- 10.4 The Licensor's sole obligation in the event of non-conformity to the Software, Updates or Upgrades will be:
- 10.4.1 in the case of Software developed or owned by the Licensor to remedy any non-conformity of the Software to its specification; and
- 10.4.2 in the case of Third Party Software to obtain and supply a corrected version where there is a demonstrated non-conformity to specification;
- provided in either case that the Licensor has been notified of the non-conformity within 90 days of the date of delivery to the Licensee.
- 10.5 The Licensor warrants that at the time of delivery, the Software will not contain any virus, worm, Trojan, time bomb or other harmful or destructive code;
- 10.6 The above constitutes the only warranties provided by the Licensor in respect of the Software. The obligations and liabilities of the Licensor set out in this License replace all express or implied guarantees and warranties, including without limitation, any warranty of satisfactory quality or fitness for a particular purpose which is the Licensee's responsibility to determine.
- 10.7 The Licensee acknowledges that:
- 10.7.1 the Software has not been produced to meet individual Licensee specifications;
- 10.7.2 the Software cannot be tested in advance in every possible operating combination and environment;
- 10.7.3 it is not possible to produce Software known to be error-free in all circumstances.
- 10.8 The Licensor recommends support and maintenance for the Software in terms of a separate maintenance and support agreement to be concluded between the parties or between the Licensee and any other authorised third party service provider providing such maintenance and support.

11. MODIFICATIONS

The Licensor reserves the right to make improvements, substitutions, modifications or enhancements to any part of the Software, provided that the functionality and performance of the Software will not as a result be materially affected to the Licensee's detriment.

12. INTELLECTUAL PROPERTY RIGHTS INDEMNITY

12.1 The Licensor, at its own expense, will defend or cause to be defended or, at its option, settle any claim or action brought against the Licensee on the issue of infringement of any intellectual property right by the Software ('Claim'). Subject to the other conditions of this clause, the Licensor will pay any final judgment entered against the Licensee with respect to any Claim, and fully indemnify the Licensee in respect of all costs and expenses relating to the Claim provided that the Licensee:

12.1.1 notifies the Licensor in writing of the Claim immediately on becoming aware of it;

12.1.2 grants sole control of the defence of the Claim to the Licensor; and

12.1.3 gives the Licensor complete and accurate information and full assistance to enable the Licensor to settle or defend the Claim.

The costs and fees of any separate legal representation for the Licensee will be the Licensee's sole responsibility.

12.2 If any part of the Software becomes the subject of any Claim or if a court judgment is made that the Software does infringe, or if the use or licensing of any part of the Software is restricted, the Licensor at its option and expense may:

12.2.1 obtain for the Licensee the right under the patent, design right, trade secret or copyright to continue to use the Software; or

12.2.2 replace or modify the Software so that any alleged or adjudged infringement is removed; or

12.2.3 if the use of the Software is prevented by permanent injunction, accept its return and refund an amount equal to the sum paid by the Licensee for the Software subject to straight line depreciation over a five-year period.

12.3 The Licensor will have no liability under this clause for:

- 12.3.1 any infringement arising from the combination of the Software with other software not supplied by the Licensor; or
- 12.3.2 the modification of the Software unless the modification was made or approved expressly by the Licensor.
- 12.4 IN NO CIRCUMSTANCES WILL THE LICENSOR BE LIABLE FOR ANY COSTS OR EXPENSES INCURRED BY THE LICENSEE WITHOUT THE LICENSOR'S PRIOR WRITTEN AUTHORISATION AND THE FOREGOING STATES THE ENTIRE REMEDY OF THE LICENSEE IN RESPECT OF ANY INTELLECTUAL PROPERTY RIGHT INFRINGEMENT BY THE SOFTWARE.

13. EXCLUSION OF LIABILITY

- 13.1 Under no circumstances whatsoever shall the Licensor be liable for any loss of damage of any kind whatsoever or howsoever caused (whether arising under contract, delict, including negligence and gross negligence and whether the loss was actually foreseen or reasonably foreseeable), suffered by the Licensee or any third party as a result of the use of the Software..
- 13.2 In the event of any court or other competent authority holding that liability under 13.1 cannot be excluded, Datatex's liability to the Licensee under this agreement and howsoever arising, shall be limited to direct damages only in an amount not exceeding 20% of the total license fee paid by the Licensee. In no event shall Datatex be liable for any indirect, incidental, extrinsic, special, penal, punitive, exemplary or consequential loss or damage of any kind whatsoever or howsoever caused (including, without limitation, damages arising from (i) missing telephone call recordings and/or loss of service provider connectivity, (ii) loss of: profit, revenue, business or data, business opportunities, operation time, (iii) corruption, (iv) alteration or loss of information and/or (v) reconstruction of corrupt, altered, incorrect or lost data) under this Agreement, regardless of whether such liability is based on breach of contract, delict, strict liability, breach of implied warranties, terms and conditions, or otherwise.
- 13.3 Any provision of law which prohibits the consensual exclusion of any of the liabilities aforesaid, shall not operate to nullify, affect or adduce the validity of the remaining liabilities not so prohibited and hereby excluded, for which purpose these terms and conditions will be regarded as severable from any other unenforceable exclusion of liability.

14. TERMINATION

- 14.1 This License may be terminated immediately by notice in writing:
- 14.1.1 by either party if the other party is in material or continuing breach of any of its obligations under this License and fails to remedy the breach (if capable of remedy) for a period of 30 days after written notice by the other party;
- 14.1.2 by either party if the other party is involved in any legal proceedings concerning its solvency, or ceases trading, or commits an act of bankruptcy or is adjudicated bankrupt or enters into liquidation, whether compulsory or voluntary, other than for the purposes of an amalgamation or reconstruction, or makes an arrangement with its creditors or petitions for an administration order or has a receiver or manager appointed over all or any part of its assets or generally becomes unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, or equivalent circumstances occur in any other jurisdiction.
- 14.2 Any termination of this License under this clause will be without prejudice to any other rights or remedies of either party under this License or at law and will not affect any accrued rights or liabilities of either party at the date of termination.
- 14.3 On termination of this License, the Licensee will be obliged to immediately return the Software to the Licensor and to certify in writing to the Licensor within 14 days of termination that it has erased the Software and all copies of any part of the Software from the Licensed Computer System and from its magnetic media and that it has no ability to reproduce the Software in any way, and it will immediately return to the Licensor all related documentation belonging to the Licensor.

15. DISPUTE RESOLUTION

- 15.1 If any dispute arises out of or in connection with this Agreement, or related thereto, whether directly or indirectly, the Parties must refer the dispute for resolution firstly by way of negotiation and in the event of that failing, by way of mediation and in the event of that failing, by way of Arbitration. The reference to negotiation and mediation is a pre-condition to the parties having the dispute resolved by arbitration.
- 15.2 A dispute shall arise if the dispute and particularity thereof is communicated by one party to the other in writing. Each party agrees to continue performing its obligations

under the Agreement while any dispute is being resolved except to the extent that the issue in dispute precludes performance.

- 15.3 Within 7 (seven) days of the dispute arising, the Parties shall seek an amicable resolution to such dispute by referring such dispute to representatives of each of the Parties concerned for their negotiation and resolution of the dispute. The representatives shall be authorised to resolve the dispute.
- 15.4 In the event of the negotiation envisaged in 15.3 failing for whatsoever reason or cause, the Parties must, within 7 (seven) days of such failure refer the dispute for resolution. The negotiation shall, inter alia, be deemed to have failed if one of the parties declares in writing that it has failed.
- 15.5 In the event of the mediation envisaged in 15.4 failing, the matter must, within 7 (seven) days thereafter, be referred to arbitration as envisaged in the clauses below.
- 15.6 The period of 7 (seven) days aforesaid for negotiation or mediation may be shortened or lengthened by written agreement between the parties.
- 15.7 Each party agrees that the Arbitration will be held in English, as an expedited arbitration in Cape Town in accordance with the then current rules for expedited arbitration of the Arbitration Foundation of Southern Africa (below "AFSA") by 1 (one) arbitrator appointed by agreement between the Parties. If the parties cannot agree on the arbitrator within a period of 5 (five) Business Days after the referral of the dispute to arbitration, the arbitrator shall be appointed by the Secretariat of AFSA.
- 15.8 The decision of the arbitrator shall be final and binding.
- 15.9 A decision which becomes final and binding in terms of clause 15.8 may be made an order of court at the instance of any Party.
- 15.10 The provisions of this clause 15 shall not preclude any Party from access to an appropriate court of law for interim relief in respect of urgent matters by way of an interdict, or *mandamus* pending the outcome of the arbitration for which purpose the Parties irrevocably submit to the jurisdiction of a division of the High Court of the Republic of South Africa.
- 15.11 The references to AFSA shall include its successors or bodies nominated in writing by it in its stead.

- 15.12 This clause is a separate, divisible agreement from the rest of this Agreement and shall remain in effect even if the Agreement terminates, is nullified or cancelled for whatsoever reason or cause.
- 15.13 This clause 15 shall survive the cancellation or termination of this Agreement for whatsoever reason or cause.
- 15.14 The Parties agree that (a) this arbitration clause favours the result that all disputes between the Parties to the Agreement must fall within the scope of this clause, forming part of it and be determined in accordance with it and (b) that all disputes arising between them will be regarded as being of a contractual nature and (c) all disputes will be regarded as being contemplated by and within the terms of this clause and that (d) no breach of natural justice will occur in connection with the making of an award in terms of this clause and no Party's rights will be deemed to have been prejudiced as a result thereof.
- 15.15 The Parties record that this agreement to mediate and then, if necessary, arbitrate was not entered into as a result of duress, undue influence or mistake. The Parties confirm that in their opinion there are no onerous or unusual terms that should have been brought to the attention of the parties, but were not. Furthermore, the Parties acknowledge that this clause entitles them to a fair hearing within a reasonable time by an independent and impartial tribunal agreed to by them.

16. GENERAL CONTRACT PROVISIONS

16.1 Variations

No variation of these terms and conditions will be valid unless confirmed in writing by authorised signatories of both parties on or after the date of this License.

16.2 Severability

If any of the provisions of this License is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of them will not be prejudiced.

16.3 Waiver

No forbearance or delay by either party in enforcing its respective rights will prejudice or restrict the rights of that party and no waiver of any such rights or of any

breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach.

16.4 Rights of Third Parties

A person who is not a party to this License has no right to benefit under or to enforce any term of this Agreement.

16.5 Assignment

Neither party will assign this License or any benefits or interests arising under this License without the prior written consent of the other party which will not be unreasonably withheld or delayed.

16.6 Notices

Any notice given under this License by either party to the other must be in writing and may be delivered four working days after the date of posting. Notices will be delivered or sent to the addresses of the parties on the first page of this License or to any other address notified in writing by either party to the other for the purpose of receiving notices after the date of this License.

16.7 Governing Law and Jurisdiction

This Agreement is governed by and construed in accordance with the laws of the Republic of South Africa.

Signed at _____ on _____ 2008

Signed by _____
in the presence of

Signature of witness ←

Signature of **THE LICENSOR** ←

Name of witness (print)

Signed at _____ on _____ 2008

Signed by _____
in the presence of

Signature of witness ←

Signature of **THE LICENSEE** ←

Name of witness (print)

SCHEDULE 1

As per Datatex Quotation

SCHEDULE 2

As per Datatex Post Installation Sign Off documentation