

## AMETHYST LICENCE AGREEMENT

### 1. Introduction

- 1.1 The Licensor is the proprietor and/or licensor of the Software.
- 1.2 The Client wishes to obtain a licence to use the Software and any Updates.
- 1.3 The Parties wish to enter into an agreement whereby the Client will be granted a licence to use the Software and any Updates. This document records the terms of such Agreement.

### 2. Definitions and interpretation

#### 2.1 Definitions

In this Agreement, the following words shall, unless otherwise stated or inconsistent with the context in which they appear, bear the following meanings and other words derived from the same origins as such words (that is, cognate words) shall bear corresponding meanings:

- 2.1.1 **"Agreement"** means this software licence agreement;
- 2.1.2 **"Business Day"** means any day other than a Saturday, Sunday or gazetted national public holiday in the Republic of South Africa;
- 2.1.3 **"Client"** means the organisation that has requested to install our Software as detailed on the Pre-Installation Order;
- 2.1.4 **"Confidential Information"** means, in relation to a Party, any information of a confidential and/or commercially sensitive nature, howsoever obtained or received and whether or not marked confidential, including any technical, commercial, financial or scientific information, know how, trade secrets, processes, marketing and business information, customer and supplier information, pricing information and/or any other information or material of whatever description or

nature proprietary to a party, whether in written, oral, magnetic, machine-readable or other format;

- 2.1.5            **"Data Protection Legislation"**        means any applicable data protection or data privacy laws applicable from time to time;
- 2.1.6            **"Destructive Code"**            means any "viruses", "Trojan horses", computer code, malware, instructions, devices or other materials that are designed to disrupt, disable, harm or otherwise impede in any manner the operation or use of the Software or the Infrastructure;
- 2.1.7            **"Documentation"**            means any written documents setting out the operation and functionality of the Software and the Updates;
- 2.1.8            **"Effective Date"**            means the date on which the Client makes payment of the Licence Fee to the Licensor in accordance with this Agreement;
- 2.1.9            **"Errors"**                        means any error, fault or defect in the operation or use of the Software;
- 2.1.10           **"Helpdesk"**                    means the Licensor's helpdesk contactable on 086 111 4351 or <http://myaccount.datatex.co.za:4580/>;
- 2.1.11           **"Infrastructure"**            means the information technology and telecommunications infrastructure and systems utilised by the Client, including (without limitation) the computer networks, hardware, software, middleware, firmware, databases, terminals and components comprising this information technology and telecommunications infrastructure and its configuration;
- 2.1.12           **"Intellectual Property Rights"**        means all intellectual property rights owned by either Party subsisting anywhere in the world, which is in any way capable of protection in law, including

without limitation, trade marks, domain names, copyright, patents, designs, Confidential Information, and all proprietary rights in and to ownership of any idea, discovery, artwork, design, concept, technique or improvement, industry information, know-how, system, methodology, data model, computer software, computer source code and object code, report, correspondence, documentation, flow chart, data base, table, calculation, spreadsheet, schematic plan, photograph, presentation or invention (whether patented or not) and any other rights of a similar nature which exist now or will in the future exist, by either Party from time to time, and whether registered or not;

- 2.1.13            **"Licensor"**            means Datatex Dynamics CC, registration number 1994/041697/23;
- 2.1.14            **"Object Code"**            means the machine-readable version of the Software and/or any Updates;
- 2.1.15            **"Personnel"**            means all directors, employees, agents, representatives and sub-contractors of a Party who are assigned from time to time to work in connection with the performance of that Party's obligations under or in connection with this Agreement;
- 2.1.16            **"Prime Rate"**            means the rate of interest (nominal annual compounded monthly in arrears) from time to time published by Standard Bank South Africa as its prime overdraft lending rate (a certificate from any manager of that bank, whose appointment or authority need not be proved, as to the prime rate at any time and the usual way in which it is calculated and compounded at such time shall, in the absence of manifest or clerical error, be final and binding on the Parties);
- 2.1.17            **"Rand" or "R"**            means South African Rand, the lawful currency of the Republic of South Africa;

- 2.1.18            **"Services"**            means the services to be provided by the Licensor to the Client in support of the Software as may be set out in a separate Support Services Agreement;
- 2.1.19            **"Signature Date"**       means the date Client accepts the terms of this Agreement by having the software installed or signing the Pre-Installation Order, whichever is first in time.
- 2.1.20            **"Software"**            means the computer software as referred to as "AMETHYST" (including any Updates thereto and any Third Party Software);
- 2.1.21            **"Support Services Agreement"**       means the written services agreement to be entered into by the Licensor and the Client, regulating, *inter alia*, the provisions of the Services by the Licensor;
- 2.1.22            **"Third Party Software"**       means all software owned by a third party, but licensed for distribution by the Licensor;
- 2.1.23            **"Trial Period"**            means the period of time, calculated from the date the first recording is made by the Client under this Agreement until the last date of the month following the month of the first recording;
- 2.1.24            **"Updates"**            means corrections of inherent Errors in the Software and any changes or improvements made to the Software by the Licensor after the Effective Date, which result in the additon of functions or features not present in the Software at the Effective Date;
- 2.1.25            **"Upgrades"**            means new versions of the Software, or portions thereof which incorporate new or enhanced functionality which result in major change in the Software;

- 2.1.26            **"Users"**                            means the specified number of users entitled to use the Software and the Updates as agreed upon by the parties;
- 2.1.27            **"VAT"**                                means value-added tax levied in terms of the Value-added Tax Act, 89 of 1991, as amended.

## 2.2            **Interpretation**

In this Agreement:

- 2.2.1            unless otherwise defined in this Agreement, the words and phrases used in this Agreement have the definitions and will be interpreted according to the definitions contained in this Agreement and the Support Services Agreement, if one has been entered into;
- 2.2.2            references to a statutory provision include any subordinate legislation made from time to time under that provision and include that provision as modified or re-enacted from time to time;
- 2.2.3            words importing the masculine gender include the feminine and neuter genders and vice versa; the singular includes the plural and vice versa; and natural persons include juristic persons and *vice versa*;
- 2.2.4            references to a "person" include a natural person, company, close corporation or any other juristic person or other corporate entity, a charity, trust, partnership, joint venture, syndicate, or any other association of persons;
- 2.2.5            if a definition imposes substantive rights and obligations on a Party, such rights and obligations shall be given effect to and shall be enforceable, notwithstanding that they are contained in a definition;
- 2.2.6            any definition, wherever it appears in this Agreement, shall bear the same meaning and apply throughout this Agreement unless otherwise stated or inconsistent with the context in which it appears;
- 2.2.7            if there is any conflict between any definitions in this Agreement then, for purposes of interpreting any clause of the Agreement, the definition appearing in that clause or paragraph shall prevail over any other conflicting definition appearing elsewhere in the Agreement;

- 2.2.8 where any number of days is prescribed, those days shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day, in which event the last day shall be the next succeeding Business Day;
- 2.2.9 references to any amount shall mean that amount exclusive of VAT, unless the amount expressly includes VAT;
- 2.2.10 the rule of construction that if general words or terms are used in association with specific words or terms which are a species of a particular genus or class, the meaning of the general words or terms shall be restricted to that same class (i.e. the *eiusdem generis* rule) shall not apply, and whenever the word "*including*" is used followed by specific examples, such examples shall not be interpreted so as to limit the meaning of any word or term to the same genus or class as the examples given.
- 2.3 The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement which are expressly provided to operate after any such expiration or termination, or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the relevant provisions themselves do not provide for this.

### **3. Duration**

This Agreement shall become effective on the Signature Date and shall continue indefinitely unless terminated in accordance with its terms.

### **4. Grant and Nature of the Licence**

- 4.1 From the Effective Date, the Licensor hereby, subject to the further terms and conditions of this Agreement, grants to the Client a non-exclusive, non-transferable and perpetual licence entitling a specified number of Users to use the Software and any Updates in Object Code for the Client's own internal business purposes.
- 4.2 Prior to the Effective Date, from the Signature Date, the Client is entitled to use the Software for evaluation purposes for the duration of the Trial Period. The Software contains disabling code which will, subject to clause 4.3 below, cause the Software to stop functioning on expiry of the Trial Period. In such instances,

this Agreement will automatically terminate. In such instances, clauses 2, 10, 11, 14 and 15.8 will survive the termination of the Agreement.

- 4.3 Notwithstanding clause 4.2 above, upon payment of the Licence Fee on or before the expiry of the Trial Period in accordance with clause 5, the Licensor will provide the Client with a key to disable the disabling code referred to in clause 4.2.
- 4.4 Except as expressly permitted in this Agreement, the Client shall not:
- 4.4.1 sell, rent, lease, sub-license or lend the Software;
  - 4.4.2 redistribute the Software;
  - 4.4.3 exceed the number of Users;
  - 4.4.4 reverse engineer, decompile or disassemble the Software; or
  - 4.4.5 wilfully remove or obscure any Licensor patent, copyright, trade mark, brand name or proprietary rights notices contained in or affixed to the Software.
- 4.5 All Updates or Upgrades will be provided to the Client in accordance with clause 4 and the Support Services Agreement.
- 4.6 If the Client sells or disposes of any Infrastructure which contains access to the Software, it will ensure that all copies of the Software have been deleted. The Client will, upon written request by the Licensor, provide the Licensor reasonable proof of such deletion.
- 4.7 The Client agrees to comply with any additional Third Party Software conditions of which it is notified in writing 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 Client of such conditions.
- 4.8 The first year's support services are included in the Licence Fee (the "**Support Service Period**"). The first year's Remote Monitoring and Remote Maintenance support services are also included, subject to the Support Services Agreement being signed. After the Support Service Period, the Client is subject to the terms and conditions of the Support Services Agreement, including the option to select relevant Service Option/s, on payment to the Licensor of the applicable Charges.

## 5. Payment

- 5.1 In consideration for the licence granted to it under clause 4 (in respect of both the Software and the Updates), the Client shall pay to the Licensor a once-off licence fee as per invoice amount ("**the Licence Fee**").
- 5.2 The Licence Fee will be paid to the Licensor by the Client (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 at +2721-5924077 or [sales@datatex.co.za](mailto:sales@datatex.co.za).
- 5.3 The Licensor may from time to time develop Upgrades to the Software. When an Upgrade is ready for release by the Licensor, the Licensor will notify the Client of the Upgrade and any additional licence fee payable for such Upgrade. The Client may, at its own election, purchase the Upgrade licence.

## 6. Training

- 6.1 The Licensor, at its own expense, shall provide the Client with suitable training and share such know-how and expertise, as may be required for Client Personnel to be suitably skilled and knowledgeable in the use of the Software on a time and date to be agreed between the Parties. The Parties agree that training in accordance with this clause shall not exceed two (2) Business Days. For the purposes of clarity, it is recorded that the Licensor's only obligation in terms of this clause 6.1 is to provide the training and share the know-how and expertise referred to in this clause with Client Personnel. The Licensor is not required to ensure that such personnel are able to competently apply the training, know-how or expertise.
- 6.2 In the event that the Client 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 Client.

## 7. Acceptance and Installation of the Software

- 7.1 Within the Trial Period, the Client will conduct its own acceptance testing to verify that the Software is installed correctly. If the Client determines that the tests

have been successful, the Client must complete and provide the Licensor with an installation certificate.

- 7.2 Should the Software, in the Client's reasonable opinion, fail to pass the acceptance tests, the Client will provide the Licensor written details of why the Software has not passed such acceptance testing. The Licensor will then have an opportunity to reinstall the Software and will inform the Client in writing once it has done so. The Client will then run acceptance tests again on the same terms as set out in clause 7.1 until they are successful.

## **8. Limitation of Liability**

- 8.1 In no event will a Party be liable to the other Party for any indirect or consequential loss or damages, provided such loss or damages did not arise as a result of a breach of clauses 9, 10 or 11 of this Agreement.
- 8.2 Subject to this clause and except for liability arising out of a party's infringement and/or misappropriation of the other Party's Intellectual Property Rights, the maximum liability of the Licensor, whether in contract or delict (including negligence) for all breaches of this Agreement, and all other events, acts, claims, omissions and causes of action of whatever nature and however arising, relating to or arising directly or indirectly from this Agreement or the Software, shall be limited to the value of the Licence Fee received by the Licensor. Nothing in this Agreement shall limit or exclude the liability of the Parties for any matter to the extent to which such liability cannot be lawfully excluded or limited.

## **9. Warranties**

- 9.1 Each Party warrants and represents that, as at the Signature Date:
- 9.1.1 it has full capacity and authority to enter into and perform its obligations under this Agreement;
- 9.1.2 this Agreement is executed by a duly authorised representative of that Party;
- 9.1.3 there are no actions, suits or proceedings or regulatory investigations pending or, to that Party's knowledge, threatened against or affecting that Party before any court or administrative body or arbitration tribunal that

might affect the ability of that Party to meet and carry out its obligations under this Agreement; and

9.2 The Licensor warrants, represents and undertakes that:

9.2.1 it is the lawful proprietor of the Software and is entitled to grant the Client the rights hereunder;

9.2.2 it has the necessary rights, licences and approvals to provide the Third Party Software to the Client in accordance with the terms of this Agreement;

9.2.3 the Software is, and all Updates will be, free from Destructive Code (except for the disabling code described in clause 4.2 above); and

9.2.4 it will process all Client data it has access to during the terms of this Agreement in compliance with Data Protection Legislation.

9.3 Except as expressly provided in this Agreement, the Licensor gives no representation, undertaking or warranties, express or implied, by operation of law or otherwise. Without derogating from the generality of the foregoing (but subject to any express warranties provided in the Agreement) the warranties of "fitness for purpose" and merchantability are excluded. Any warranties given by Licensor extend solely to Client and are not transferable.

9.4 Without limiting generality of clause 4.4 above, as at the Signature Date, the Client warrants, represents and undertakes that it:

9.4.1 will use the Software only for the purposes of its business and not for any form of commercial exploitation;

9.4.2 use reasonable care and protection to prevent the unauthorised use, copying, publication or dissemination of the Software;

9.4.3 will not use the Software in any manner that is not permitted in terms of this Agreement;

9.4.4 will satisfy itself that the Software meets the needs of its business. It is the sole responsibility of the Client to determine that the Software is ready for operational use in the Client's business before it is so used;

- 9.4.5 will ensure that the Infrastructure and any other software with which the Software will be used is either the property of the Client or is legally licensed to the Client for use with the Software. The Client will indemnify the Licensor in respect of any claims by third parties and all related costs, expenses or damages in the event of the Client's Infrastructure allegedly violating any third party proprietary rights which results in any claims against the Licensor.

## 10. Intellectual Property

- 10.1 Subject to the further provisions of this clause, all rights, title, ownership and interest (including Intellectual Property Rights) in and to any materials, which belong to any of the Parties, and/or their vendors and/or Licensors (as the case may be) shall at all times remain the sole property of such Party, and/or their vendors or Licensors.
- 10.2 Subject to the further provisions of this clause neither Party shall in any manner alter or remove or affect the display of the respective Intellectual Property Rights notices (and disclaimers) of the other Party and/or their vendors and Licensors without the prior written approval of the other Party, and their vendors or Licensors where applicable.
- 10.3 All rights, including all Intellectual Property Rights in and to any Client data shall vest in and shall remain vested in the Client.
- 10.4 The Client acknowledges and agrees that all Intellectual Property Rights in and to the Software, any Updates, Upgrades and the Documentation as a whole, belong to and vest in the Licensor.

## 11. Confidentiality

- 11.1 A Party hereby undertakes to the other Party that:
- 11.1.1 it will ensure that each of its directors, members, employees, contractors or agents (together, "**Representatives**") to whom the Confidential Information is made available is advised of its undertakings and confidentiality obligations in terms of this Agreement, and shall ensure that such Representatives agree to these undertakings and obligations;

- 11.1.2 it and its Representatives will treat all Confidential Information as private and confidential and will not review, reproduce, replicate, copy, publish or circulate the Confidential Information, in whole or in part, save with the prior consent of the other Party;
- 11.1.3 it will not, and shall ensure that its Representatives will not, use, permit the use of or apply any of the Confidential Information for any purpose whatsoever, save for the purpose of carrying out the instruction;
- 11.1.4 it will not, and shall ensure that its Representatives will not, divulge, furnish or disclose to any person, in any form or manner whatsoever, either directly or indirectly, any of the Confidential Information;
- 11.1.5 it and its Representatives will not use or exploit, for its or their own benefit, or for the benefit of any third party, in any form or manner whatsoever, directly or indirectly, any of the Confidential Information;
- 11.1.6 ownership in the Confidential Information shall remain vested in the disclosing party and shall not pass to it and/or its Representatives by virtue of the provisions of this Agreement, nor shall it and/or its Representatives be deemed to have been in any way licensed to use any of the Confidential Information in any manner;
- 11.1.7 it will not, and shall ensure that its Representatives will not, disclose to any person that the Confidential Information exists or has come into its/their possession;
- 11.1.8 it agrees to keep the terms of this Agreement confidential.
- 11.2 For the avoidance of doubt, the Client understands and agrees that the Licensor is entitled to access its information and data which used with the Software in order of rectify any problems with the Software. Such information and data constitutes Confidential Information which shall be kept confidential by Licensor.

## 12. Termination

Without limiting clause 4.2, either Party shall be entitled to give notice to terminate this Agreement with immediate effect, such termination to be effective upon deemed receipt of such notice, if the other Party commits a material breach of any of the terms of this

Agreement and (if such a breach is remediable) fails to remedy that breach within 14 days of that Party being notified in writing of the breach.

### 13. Relationship

13.1 This Agreement does not make 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, or to bind the other's credit unless expressly duly authorised thereto in writing.

13.2 Nothing in this Agreement shall be construed as creating a partnership, relationship of employment or joint venture between the Parties.

### 14. Mediation and arbitration

#### 14.1 **separate, divisible agreement**

This clause is a separate, divisible agreement from the rest of this Agreement and shall:

14.1.1 not be or become void, voidable or unenforceable by reason only of any alleged misrepresentation, mistake, duress, undue influence, impossibility (initial or supervening), illegality, immorality, absence of consensus, lack of authority or other cause relating in substance to the rest of the Agreement and not to this clause. The Parties intend that any such issue shall at all times be and remain subject to arbitration in terms of this clause;

14.1.2 remain in effect even if the Agreement terminates or is cancelled.

#### 14.2 **disputes subject to mediation and arbitration**

Save as may be expressly provided for elsewhere in this Agreement for the resolution of particular disputes, any other dispute arising out of or in connection with this Agreement or the subject matter of this Agreement, including without limitation, any dispute concerning:

14.2.1 the existence of the Agreement apart from this clause;

14.2.2 the interpretation and effect of the Agreement;

14.2.3 the Parties' respective rights or obligations under the Agreement;

- 14.2.4 the rectification of the Agreement;
- 14.2.5 the breach, termination or cancellation of the Agreement or any matter arising out of the breach, termination or cancellation;
- 14.2.6 damages arising in delict, compensation for unjust enrichment or any other claim, whether or not the rest of the Agreement apart from this clause is valid and enforceable,

shall be referred to mediation as set out in 14.3.

#### 14.3 **mediation**

If the Parties are unable to agree on a mediator or to resolve any dispute by way of mediation within 14 days of any Party in writing requesting that the dispute be resolved by mediation, then the dispute shall be submitted to and decided by arbitration as set out in this clause.

#### 14.4 **arbitration**

- 14.4.1 The Parties shall agree on the arbitrator who shall be an attorney or advocate on the panel of arbitrators of the Arbitration Foundation of Southern Africa ("**AFSA**"). If agreement is not reached within 10 Business Days after any Party calls in writing for such agreement, the arbitrator shall be an attorney or advocate nominated by the Registrar of AFSA for the time being.
- 14.4.2 The request to nominate an arbitrator shall be in writing outlining the claim and any counterclaim of which the Party concerned is aware and, if desired, suggesting suitable nominees for appointment as arbitrator, and a copy shall be furnished to the other Parties who may, within 7 days, submit written comments on the request to the addressee of the request with a copy to the first Party.
- 14.4.3 The arbitration shall be held in Cape Town or Johannesburg and the Parties shall endeavour to ensure that it is completed within 90 days after notice requiring the claim to be referred to arbitration is given.

- 14.4.4 The arbitration shall be governed by the Arbitration Act, 1965, or any replacement Act and shall take place in accordance with the Commercial Arbitration Rules of AFSA.
- 14.4.5 The arbitrator need not strictly observe the principles of law and may decide the matters submitted to him according to what he considers equitable in the circumstances.
- 14.4.6 Nothing contained in this clause 14.4 shall prohibit a Party from approaching any court of competent jurisdiction for urgent interim relief pending determination of the dispute by arbitration.

## 15. Miscellaneous matters

### 15.1 domicilia and notices

15.1.1 For the purposes of this Agreement, including the giving of notices and the serving of legal process, the Parties choose *domicilium citandi et executandi* at:

15.1.1.1 the Licensor:

address :  99 Nelson Street  
 Goodwood  
 Cape Town  
 7460

and marked for the attention of  Johan Landman

15.1.1.2 the Client:

The Client's address as indicated on the Pre-Installation Order.

15.1.2 The notice shall be deemed to have been duly given:

15.1.2.1 on delivery, if delivered to the Party's physical address in terms of either this sub-clause, during normal business hours (or on the first Business Day after that if delivered outside such hours);

15.1.2.2 on despatch, if sent to the Party's then fax number (provided that the sender has evidence of successful transmission) during normal

business hours (or on the first Business Day after that if despatched outside such hours),

unless the addressor is aware, at the time the notice would otherwise be deemed to have been given, that the notice is unlikely to have been received by the addressee through no act or omission of the addressee.

15.1.3 A Party may change that Party's address or fax number for this purpose, by notice in writing to the other Party such change to be effective only on and with effect from the seventh Business Day after the giving of such notices.

15.2 **entire contract**

This Agreement contains all the express provisions agreed on by the Parties with regard to the subject matter of the Agreement and supersedes and novates in its entirety any previous understandings or agreements between the Parties in respect thereof, and the Parties waive the right to rely on any alleged provision not expressly contained in this Agreement.

15.3 **no stipulation for the benefit of a third person**

Save as is expressly provided for in this Agreement, no provision of this Agreement constitutes a stipulation for the benefit of a third person (i.e. a *stipulatio alteri*) which, if accepted by the person, would bind any Party in favour of that person.

15.4 **no representations**

A Party may not rely on any representation which allegedly induced that Party to enter into this Agreement, unless the representation is recorded in this Agreement.

15.5 **variation, cancellation and waiver**

No contract varying, adding to, deleting from or cancelling this Agreement, and no waiver of any right under this Agreement, shall be effective unless reduced to writing and signed by or on behalf of the Parties.

## 15.6 **indulgences**

The grant of any indulgence, extension of time or relaxation of any provision by a Party under this Agreement shall not constitute a waiver of any right by the grantor or prevent or adversely affect the exercise by the grantor of any existing or future right of the grantor.

## 15.7 **cession and delegation**

Except as provided for elsewhere in this Agreement, a Party may not cede any or all of that Party's rights or delegate any or all of that Party's obligations under this Agreement without the prior written consent of the other Party whose consent shall not be unduly delayed or unreasonably withheld.

## 15.8 **applicable law and jurisdiction**

This Agreement is to be governed, interpreted and implemented in accordance with the laws of the Republic of South Africa and the Parties consent to the non-exclusive jurisdiction of the High Court of South Africa, Western Cape, Cape Town for any proceedings arising out of or in connection with this Agreement. 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.

## 15.9 **costs**

Each Party shall bear that Party's own legal costs and disbursements of and incidental to the negotiation, preparation, settling, signing and implementation of this Agreement. Any costs, including all legal costs on an attorney and own client basis and VAT, incurred by a Party arising out of or in connection with a breach by another Party shall be borne by the Party in breach.

## 15.10 **signature in counterparts**

This Agreement may be executed in counterparts, each of which shall be deemed to be an original and which together shall constitute one and the same agreement.