



JSE Limited
Reg. No. 2005/022939/06

JSE LIMITED

and

**THE END-USER
AS SPECIFIED IN THE TALX ORDER FORM
("THE LICENSEE")**

LICENCE AND MAINTENANCE AGREEMENT

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1. PREAMBLE

The JSE has been granted the right and license to distribute the Software, and therefore to grant the LICENSEE a right and sub-license to use the Software, on the terms and conditions set out in this Agreement.

1.1. DEFINITIONS INTERPRETATION

Unless otherwise expressly specified in this Agreement, each of the expressions mentioned in this Agreement shall have the following meaning:

- 1.1.1. **“Agreement”** means this software license agreement between the JSE and the LICENSEE and all schedules and any other Attachments to this Agreement.
- 1.1.2. **“Consumer Price Index”** means the annual change in the Consumer price index calculated for October of the then current calendar year in respect of all items for Metropolitan Areas of the Republic of South Africa, as published by Statistics South Africa from time to time.
- 1.1.3. **“Documentation”** means the User Manual and/or the Operating Manual, as applicable.
- 1.1.4. **“Equipment”** means the LICENSEE’s hardware, operating systems, equipment and other facilities listed in the TOF, on which the Software is to be installed and/or operated and which must comply with the Minimum Requirements.
- 1.1.5. **“Error”** means an error, bug or program problem in the code of the Software which prevents any part of the Software from performing according to the Specifications.
- 1.1.6. **“Error Report”** means an accurate description of an Error, its impact on the operation of the Software and the steps taken by the LICENSEE to try to remedy it, set out in a form provided by the JSE.
- 1.1.7. **“the Supplier”** means the entity that has licensed the Software to the JSE.
- 1.1.8. **“Information”** means all public information and compilations or any part thereof, in respect of the JSE’s market and business which the JSE makes available to the LICENSEE and/or to third parties under contractual arrangements outside of this Agreement and/or all public information and compilations or any part thereof, in respect of the NSX’s market and business which the NSX makes available to the LICENSEE and/or to third parties under contractual arrangements outside of this Agreement.
- 1.1.9. **“JSE Information Distribution Agreement”** means the agreement in terms of which a person may subscribe to the Information services offered by the JSE.
- 1.1.10. **“JSE Services Agreement”** means the agreement in terms of which a person may subscribe to various services offered by the JSE, but excluding receipt of Information which is offered under the JSE Information Distribution Agreement or the equivalent NSX contract.
- 1.1.11. **“JSE’s Systems”** means the computer systems used, owned and/or operated by or on behalf of the JSE.
- 1.1.12. **“Licence”** means the non-assignable, non-exclusive and personal right granted by the JSE to the LICENSEE to use the Software chosen by the LICENSEE in the TOF, on the terms and conditions set out in this Agreement.

- 1.1.13. **“Maintenance”** means the maintenance and support of the Software provided to the LICENSEE by the JSE or by one of the JSE’s representatives or subcontractors.
- 1.1.14. **“Minimum Requirements”** means the minimum hardware and operating system requirements required in order to operate the Software so that it is able to perform according to the Specifications. The current requirements as at the date of signature of this Agreement are attached to this Agreement as Schedule 3.
- 1.1.15. **“NSX”** means the Namibia Stock Exchange.
- 1.1.16. **“Operating Manuals”** means the documents explaining the operation, installation and configuration of the relevant server Software modules, which are supplied to the LICENSEE by the JSE, and may be amended by the JSE from time to time.
- 1.1.17. **“Parties”** means both the JSE and the LICENSEE.
- 1.1.18. **“Party”** means either the JSE or the LICENSEE.
- 1.1.19. **“Prime Rate”** means the rate of interest (expressed as a percentage rate per annum, calculated daily and compounded monthly) from time to time, and quoted as such by the JSE’s bankers as being the bank’s prime overdraft rate and determined on a 365 day year, as certified by any manager of the JSE’s bankers, whose appointment need not be proved.
- 1.1.20. **“Programmable Keyboard”** means a keyboard in respect of which specific functionality has been assigned to certain keys in a manner which causes the Software not to be able to function in accordance with the Specifications.
- 1.1.21. **“Release ”** means a new version of the Software containing one or more changes, improvements and/or additions to the then existing Software, as specified in the relevant Release Note. In certain cases, a Release may require modification to the Equipment by the LICENSEE.
- 1.1.22. **“Release Note”** means the documentation, where applicable, delivered by the JSE to the LICENSEE with a Release.
- 1.1.23. **“Service Level Guidelines”** means the non-binding service levels in connection with the Software that the JSE will use its reasonable endeavours to meet, as set out in Schedule 2.
- 1.1.24. **“Site/s”** means the premises where the Software is to be installed, as stated in the TOF.
- 1.1.25. **“Software”** means the computer programs listed in the TOF, including the load modules and related elements thereof and all Releases.
- 1.1.26. **“Specifications”** means the functional and technical specifications for the Software, as set out in the Documentation.
- 1.1.27. **“TOF”** means the TALX Order Form attached to this Agreement as Schedule 1, as amended from time to time by written agreement between the Parties.
- 1.1.28. **“User Manual”** means the document(s) explaining the use of the workstation Software provided by the JSE to the LICENSEE, which may be amended by the JSE from time to time.

- 1.2. In this Agreement, unless inconsistent with the context, words referring to:
 - 1.2.1. one gender include a reference to the other gender;
 - 1.2.2. the singular include the plural and vice versa; and
 - 1.2.3. natural persons include artificial persons and vice versa.
- 1.3. Whenever a number of days is prescribed in this Agreement, such number shall be calculated excluding the first and including the last day, unless the last day falls on a Saturday, Sunday or statutory public holiday in the Republic of South Africa, in which case the last day shall be the next day which is not a Saturday, Sunday or statutory public holiday.
- 1.4. Whenever an expression defined in this Agreement is used in any schedule to this Agreement or in any other document comprising the Agreement, unless otherwise stated or clearly indicated from the context, such expression shall bear the same meanings as ascribed to them in this Agreement.
- 1.5. Any substantive provision conferring rights or imposing obligations on any party in a definition in this Agreement shall be given effect to as if it were a substantive provision in the body of this Agreement.

2. **LICENCE**

The JSE grants the LICENSEE a non-exclusive and non-assignable right and licence to use the Software selected by the LICENSEE in the TOF, at the Site/s, on the terms and conditions set out in this Agreement and the LICENSEE accepts such right and licence on the terms and conditions set out in this Agreement

3. **DURATION AND TERMINATION**

- 3.1. This Agreement will become effective when signed by the last Party.
- 3.2. Save for the provisions of Sections 3.4, 3.5, 3.6, 6.3, 6.10, 6.11, 8.1, 8.2, 8.3, 8.4, 8.6, 11, 14, 16, 18.5, 19 and 20, which will persist beyond the termination of this Agreement, this Agreement will remain in force unless and until terminated in accordance with this Agreement.
- 3.3. The LICENSEE is entitled to terminate this Agreement at any time by giving not less than 60 days written notice to the JSE.
- 3.4. The JSE is entitled to terminate this Agreement in accordance with the provisions of the breach clause contained in this Agreement. The JSE may also terminate this Agreement if the agreement entered into between the JSE and the Supplier expires or terminates. In such event the JSE may arrange that the rights and obligations of the JSE under this Licence will be transferred to the Supplier on the same terms and conditions as contained in this Agreement, subject to the prior written approval of the LICENSEE.
- 3.5. Termination of this Agreement shall not affect the rights or obligations of either Party which may have arisen prior to the date of termination.
- 3.6. Upon the expiry of this Agreement or upon termination thereof for any reason whatsoever, the LICENSEE shall:
 - 3.6.1. stop using the Software;

- 3.6.2. pay all the sums that are either due or billable as at the date of termination;
- 3.6.3. return to the JSE all the Software components (disks, diskettes, CD Roms, tapes or other media, Documentation, copies, etc.) within one month from the expiration or termination of this Agreement;
- 3.6.4. warrant to the JSE that all copies of the Software, including backup copies and versions obtained for the purposes of disaster recovery, have been returned to the JSE; and
- 3.6.5. if requested by the JSE, allow the JSE or its agent access to the Site/s in order to physically remove the Software and, if any, any accompanying equipment provided by the JSE under this Agreement.

4. **SPECIAL TERMS AND CONDITIONS OF THE LICENCE**

- 4.1. The LICENSEE may only use the Software for its own use and under and in compliance with this Agreement.
- 4.2. Under no circumstances is the LICENSEE authorised to use the Software and Documentation at any place other than at the Site/s without first obtaining the JSE's consent in writing (which may be by way of amendment to the TOF).
- 4.3. The LICENSEE may not use the Software for any illegal purpose or otherwise than in compliance with the applicable laws of the Republic of South Africa and the jurisdiction in which the LICENSEE operates.
- 4.4. This Licence does not grant the LICENSEE any intellectual property rights (including copyright, patent and trademark rights) in the Software or the Documentation or any Releases. Furthermore, under no circumstances does the Licence granted under this Agreement include disclosure of the Software's source codes.
- 4.5. Except as allowed under statutory law, the LICENSEE may not:
 - 4.5.1. disclose, disseminate, lend, or otherwise transfer the Software either in whole or in part to a third party, whether by assigning it, granting a licence or sub-licence to it, operating it in a facilities management manner or in outsourcing it or in any other manner allowing a third party to have control over the Software, except for instances where, after written advice to the JSE (which may be made by the LICENSEE in the TOF), the LICENSEE'S facilities and/ or maintenance have been outsourced to a third party and the third party is also bound by the same provisions as contained in the clause entitled "Confidentiality" in this Agreement;
 - 4.5.2. copy, adapt, decompile, reverse engineer, disassemble or attempt to determine the underlying source codes of the Software in any manner or allow the foregoing:
 - 4.5.2.1. modification of all or part of the Software, particularly any tampering with the source codes of the Software;
 - 4.5.2.2. disclosure to any third party whatsoever of the contents of the Software, the Documentation or other information provided by the JSE relating to the Software, without first obtaining the JSE's consent in writing.
- 4.6. The LICENSEE is responsible for obtaining from the appropriate authorities, and especially the relevant market authorities, all the authorisations necessary to conduct its business and, if needed, to use the Software.

- 4.7. The LICENSEE has the responsibility for day to day operation, management and use of the Software and Documentation at the Site/s in accordance with this Agreement. The JSE's obligation to provide Maintenance in terms of this Agreement does not extend to supervising, directing or managing the use of the Software on a day to day operational basis.
- 4.8. If an attempt is made by any authority or other party to seize the Software, the LICENSEE must immediately notify the JSE that this is happening, raise all lawful objections against the seizure and take all necessary steps to make known the that the intellectual property rights in the Software belong to the Supplier.

5. SOFTWARE DELIVERY AND INSTALLATION

- 5.1. The JSE will facilitate the installation of the Software selected by the LICENSEE in the TOF on a date or dates to be agreed between the Parties and to be inserted in the TOF, once agreed.
- 5.2. The LICENSEE acknowledges that in order for the Software to function properly and for the JSE to provide the Maintenance, it is imperative to have the latest Release installed. The LICENSEE must take all steps required to enable such installation.
- 5.3. It is recorded that if the LICENSEE orders Software which will be installed on a server/s at the Site/s, then the LICENSEE must conduct and pass conformance testing on terms stipulated by the JSE before such Software may be used by the LICENSEE in live production. The JSE will assist the LICENSEE in this process.
- 5.4. The LICENSEE expressly acknowledges that access to the JSE's Systems for the purposes of this Agreement only covers use of the Software chosen by the LICENSEE. Any other use of the JSE's network infrastructure by the LICENSEE in a manner not approved by the JSE in writing will constitute a breach of a material term of this Agreement.

6. FINANCIAL TERMS

- 6.1. The Licence and Maintenance fees and any other fees payable for or in connection with the Software will be set out in the JSE'S price list as published from time to time.
- 6.2. The LICENSEE shall pay to the JSE such fees as are applicable to the Software chosen by the LICENSEE in the TOF.
- 6.3. Fees will be billed monthly in advance from the month that the LICENSEE starts using the Software in live production and are payable by the LICENSEE within 30 days of the date of the JSE's invoice. Failure to pay timeously may be treated by the JSE as a breach by the LICENSEE of a material term of this Agreement.
- 6.4. All fees are subject to Value Added Tax at the prescribed rate, and any other tax, duty or levy imposed by legislation. The JSE is entitled to add any such amounts to relevant invoices.
- 6.5. The fees are subject to annual review and may be increased each year by an amount equivalent to no less than the Consumer Price Index. The JSE shall notify the LICENSEE 30 days prior to the beginning of each calendar year of the rate of increase for the following calendar year.
- 6.6. In the event that the JSE wishes to increase any of the fees by an amount greater than the Consumer Price Index, the JSE will give the LICENSEE not less than 60 days prior written

notice of such increase. Such increase shall be effective from the first day after the end of such notice period.

- 6.7. If the JSE wishes to vary the manner in and/or basis on which fees are payable by the LICENSEE pursuant to this Agreement, the JSE will give the LICENSEE 90 days written notice of such variation. Such variation shall be effective from the first day after the end of such notice period.
- 6.8. In increasing or varying any fees, the JSE undertakes to treat the LICENSEE equitably in relation to other licensees of the Software.
- 6.9. The JSE will use reasonable endeavours to notify the LICENSEE of any changes to the fees payable from time to time in terms of this Agreement. Notwithstanding the aforesaid, the LICENSEE shall ensure that it is aware of and acts in accordance with the latest price list issued by the JSE from time to time.
- 6.10. The JSE shall be entitled to charge interest on all overdue payments at the Prime Rate plus 2%, from the date on which payment was due to the JSE until the date on which payment is received from the LICENSEE.
- 6.11. If the interest rate referred to in section 6.10 exceeds the maximum rate recoverable under South African law, the interest amount will be the maximum amount recoverable under South African law, from time to time.

7. MINIMUM REQUIREMENTS AND EQUIPMENT

- 7.1. The JSE may amend the Minimum Requirements from time to time on notice to all LICENSEES.
- 7.2. Unless otherwise agreed between the JSE and the LICENSEE in writing, in the event that a proposed change to the Software, in the JSE's reasonable opinion, requires a material change to the Minimum Requirements, the JSE will give the LICENSEE 120 days written notice, or as much notice as is reasonable in the circumstances of the change to the Minimum Requirements. Any changes to the Minimum Requirements which are not material may be effected by the JSE upon 30 days written notice to the LICENSEE, or as much notice as is reasonable in the circumstances.
- 7.3. The JSE will use its reasonable endeavours to distribute all changes to the Minimum Requirements to the LICENSEE. Nevertheless, it is the LICENSEE's obligation to ensure that it is aware of and acts in accordance with the latest Minimum Requirements issued by the JSE from time to time.
- 7.4. The LICENSEE must provide the JSE with a comprehensive explanation of the LICENSEE's relevant IT technology and application architecture and any changes thereto that may affect the operation of the Software, including configuration and installation details. This will facilitate problem resolution by the JSE and thus carrying out of Maintenance by the JSE in terms of this Agreement.

8. DECLARATION OF INSTALLATIONS

- 8.1. At the end of each month the LICENSEE must confirm in writing to the JSE the number and description of installations of the Software at the LICENSEE's Site/s during that month and the address of each such Site, using a form provided by the JSE.

- 8.2. The LICENSEE undertakes to transmit an electronic version of the declaration referred to in clause 8.1 to the JSE by e-mail, or to fax the declaration to the JSE, by the last Friday of each month (or if the last Friday is not a working day, the last working day before that Friday).
- 8.3. The LICENSEE shall, during each calendar year of this Agreement, or part thereof, and for a period of 4 years thereafter, keep true and accurate records containing all facts which may be necessary for the purpose of auditing compliance by the LICENSEE with its obligations under this Agreement. The LICENSEE must further provide the JSE with a copy of such records at any time during the above period, upon written request from the JSE.
- 8.4. These records may be kept in electronic format and the JSE shall have the right to have an audit conducted, either itself or through an independent auditor chosen by the JSE at its discretion, to examine those records in order to check compliance by the LICENSEE with its obligations pursuant to this Agreement and, in particular, the accuracy of the installation declarations provided by the LICENSEE to the JSE.
- 8.5. The LICENSEE also undertakes to procure access for the JSE or its agent to conduct audits at the Site/s.
- 8.6. The JSE shall pay the costs of all such audits referred to above except where such an audit reveals an overall discrepancy of more than 5% in favour of the LICENSEE, in which event the LICENSEE shall, on request, pay the costs of the relevant audit, and any fees owing to the JSE as a result of such discrepancy.

9. **WARRANTIES AND REPRESENTATIONS**

9.1. **WARRANTIES BY THE JSE**

- 9.1.1. SUBJECT TO 9.2, THE JSE WARRANTS THAT THE SOFTWARE SELECTED BY THE LICENSEE IN THE TOF WILL FUNCTION IN ACCORDANCE WITH THE SPECIFICATIONS, WHEN PROPERLY USED ON THE EQUIPMENT, PROVIDED THAT THE EQUIPMENT CONFORMS TO THE MINIMUM REQUIREMENTS. THE JSE DOES NOT WARRANT THAT THE SOFTWARE WILL FUNCTION WITHOUT INTERRUPTION OR BE ERROR-FREE.
- 9.1.2. THE JSE MAKES NO OTHER EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES.
- 9.1.3. THE LICENSEE'S SOLE REMEDY IN RESPECT OF ANY OF THE SOFTWARE'S FAILURE TO MEET THE WARRANTY IN CLAUSE 9.1.1 IS LIMITED TO:
- 9.1.3.1. AN OBLIGATION ON THE PART OF THE JSE TO REPLACE AND/OR REPAIR (AT THE JSE'S DISCRETION) THE DEFECTIVE SOFTWARE; AND
- 9.1.3.2. IF THE FAILURE TO MEET THE WARRANTY IN CLAUSE 9.1.1 AMOUNTS TO A CATEGORY ONE OR TWO ERROR (AS DESCRIBED IN THE SERVICE LEVEL GUIDELINES) AND THE REPLACED OR REPAIRED SOFTWARE STILL FAILS TO FUNCTION IN ACCORDANCE WITH THE SPECIFICATIONS FOR MORE THAN 5 BUSINESS DAYS IN ANY QUARTER, A REDUCTION IN THE FEES PAYABLE BY THE LICENSEE FOR SUCH SOFTWARE, PRO RATA TO THE NUMBER OF DAYS THAT THE SOFTWARE FAILED TO FUNCTION IN ACCORDANCE WITH THE SPECIFICATIONS.
- 9.1.4. SUBJECT TO 9.2, THE JSE WARRANTS THAT IT HAS ACQUIRED THE NECESSARY RIGHT TO GRANT THE LICENSEE THE LICENCE AND THAT THE USE OF THE

SOFTWARE WILL NOT INFRINGE THE INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY, AND THE JSE INDEMNIFIES THE LICENSEE FROM AND AGAINST ANY LOSS SUSTAINED BY THE LICENSEE IF IT IS DEMONSTRATED BY A BINDING LEGAL DECISION THAT THE INTELLECTUAL PROPERTY RIGHTS OF THAT THIRD PARTY HAVE BEEN INFRINGED BY THE LICENSEE'S USE OF THE SOFTWARE UNDER THIS AGREEMENT.

9.1.5. SUBJECT TO 9.2, THE JSE WARRANTS THAT THE MAINTENANCE WILL BE PERFORMED:

9.1.5.1. WITH PROMPTNESS AND DILIGENCE; AND

9.1.5.2. IN A PROFESSIONAL MANNER.

9.2. **LIMITATIONS ON THE JSE'S WARRANTIES**

THE WARRANTIES OUTLINED IN 9.1 SHALL NOT APPLY IN THE FOLLOWING SITUATIONS:

9.2.1. IF THE SOFTWARE IS MODIFIED, DAMAGED OR CORRUPTED BY THE LICENSEE OR BY A THIRD PARTY NOT AUTHORISED BY THE JSE;

9.2.2. IF ANY PROBLEMS ENCOUNTERED RESULT FROM THE INCORRECT USE OF THE SOFTWARE BY THE LICENSEE, MALFUNCTIONING OF THE EQUIPMENT OR OF COMPONENTS OF THE EQUIPMENT, INCLUDING APPLICATIONS NOT PROVIDED BY THE JSE, UNAUTHORISED MODIFICATIONS OR ANY OTHER SIMILAR CAUSE REASONABLY BEYOND THE JSE'S CONTROL;

9.2.3. IF THE SOFTWARE IS INSTALLED ON EQUIPMENT WHICH DOES NOT MEET THE MINIMUM REQUIREMENTS;

9.2.4. IF THE LICENSEE USES A PROGRAMMABLE KEYBOARD;

9.2.5. IF THE LICENSEE DOES NOT COMPLY WITH THE DOCUMENTATION AND/OR ANY OTHER OPERATING INSTRUCTIONS FOR THE SOFTWARE; OR

9.2.6. IF THE LICENSEE DOES NOT USE THE RELEASE/S OF THE SOFTWARE ACCORDING TO THE RELEASE NOTES ISSUED BY THE JSE FROM TIME TO TIME.

9.3. **LICENSEE Representations**

The LICENSEE represents that it will:

9.3.1. allow the JSE or its agents access to the Site/s in order to carry out their obligations under this Agreement;

9.3.2. ensure that the LICENSEE's employees who use the Software have the necessary technical knowledge and are sufficiently available when the JSE requires them for the purposes of Maintenance, particularly where the LICENSEE has server Software installed at the Site/s; and

9.3.3. provide the JSE with all the information and answers to any queries the JSE considers necessary in order to fulfill the JSE'S obligations under this Agreement.

10. MAINTENANCE

10.1. General

The Maintenance provided by the JSE shall apply to all the Software for which this Licence has been granted to the LICENSEE, and does not cover any issues relating to the LICENSEE's hardware, network, or operating systems. It is expressly specified that the JSE is not responsible for maintaining the Equipment.

10.2. Corrective Maintenance

Corrective Maintenance consists of the diagnosis and correction of Errors. It will be provided in accordance with the terms of the Service Level Guidelines.

10.3. Releases

The JSE will provide the LICENSEE with Releases, when available. This will enable the LICENSEE to benefit from general Error correction and enhanced functionality on an ongoing basis. The LICENSEE will be obliged to install such Releases. The JSE gives no undertakings with regard to the number and frequency of Releases.

10.4. Delivery of Releases

10.4.1. Delivery of a Release will take place in accordance with Release Notes, which will provide the main milestones and functionality of each Release. Each Release Note will also contain a list of the modules included in the kit, when new, a description of their main functions, and technical information regarding installation of the Release.

10.4.2. The JSE has the right to decide the time frame for deploying Releases.

10.4.3. For every Release of the Software the same warranties apply as for the Release previously installed.

10.5. Installation of Releases

Releases of the Software must be installed by the LICENSEE in accordance with the relevant Release Notes, normally outside of JSE trading hours. Where possible, the JSE will assist with installation of Releases.

10.6. Support of Releases

10.6.1. The LICENSEE expressly agrees that the JSE will only support the latest Releases as identified by the JSE from time to time.

10.6.2. If major architecture changes in the Software are planned (e.g. phase out of an operating system like NT), the JSE will use its best efforts to inform the LICENSEE as soon as reasonably possible. Therefore the JSE will endeavour to ensure that major changes to the architecture and major Releases are announced 6 months in advance.

10.7. Limitations

10.7.1. The JSE shall not be required to provide Maintenance in the following cases:

10.7.1.1. if the LICENSEE uses a Programmable Keyboard to operate the Software;

- 10.7.1.2. if the Software has been modified, damaged or corrupted by anyone not authorised by the JSE;
- 10.7.1.3. if the problems encountered result from incorrect use of the Software by the LICENSEE, malfunctioning of equipment or of components, including applications, not provided by the JSE, unless the Software caused such equipment or components, including applications, to malfunction; unauthorised modifications or any other similar causes reasonably beyond the JSE's control;
- 10.7.1.4. if the LICENSEE does not use the latest Releases of the Software concerned (as identified by the JSE from time to time) or use or install the Software in accordance with the relevant Release Notes; or
- 10.7.1.5. if the Software is installed on equipment which does not meet the Minimum Requirements.
- 10.7.2. Further, Maintenance does not include:
 - 10.7.2.1. the wiring of a space to connect a station and/or telecommunications wiring; or
 - 10.7.2.2. provision and loading of the operating systems of the computers on which the Software is installed.

11. LIMITATION OF LIABILITY AND INDEMNITY

11.1. LIMITATION OF LIABILITY

- 11.1.1. THE LICENSEE ACKNOWLEDGES THAT:
 - 11.1.1.1. THE SOFTWARE INSTALLED AT THE SITE/S UNDER THIS AGREEMENT IS A COMPLEX COMPUTER SYSTEM;
 - 11.1.1.2. THE LICENSEE HAS ALL THE NECESSARY EXPERTISE REQUIRED TO ASSESS THE QUALITY OF THE TRANSMISSIONS THAT WILL BE EXCHANGED VIA THE SOFTWARE;
 - 11.1.1.3. THE LICENSEE IS SOLELY LIABLE FOR THE PRECAUTIONS TO BE TAKEN IN USING THE SOFTWARE, FOR MAKING BACK-UPS OF THE DATABASES TO USE THE SOFTWARE, FOR THE EXPERTISE, SKILL AND QUALIFICATIONS OF THE LICENSEE'S PERSONNEL REQUIRED TO BE ABLE TO MAKE USE OF THE SOFTWARE AND FOR THE USE THE LICENSEE MAKES OF THE RESULTS OBTAINED FROM THE SOFTWARE; AND
 - 11.1.1.4. THE LICENSEE WILL COMPLY WITH THE MINIMUM REQUIREMENTS.
- 11.1.2. CONSEQUENTLY, THE JSE SHALL IN NO WAY BE LIABLE FOR:
 - 11.1.2.1. LOSSES SUSTAINED AS A RESULT OF ANY FAILURE OF THE LICENSEE'S TRANSACTIONS CONDUCTED VIA THE SOFTWARE, AND THE LICENSEE MUST THUS ASSUME ALL THE RISK AND CONSEQUENCES THEREOF; AND
 - 11.1.2.2. ANY TECHNICAL FAILURE OR DELAY SUSTAINED OR ALLEGEDLY SUSTAINED BY THE LICENSEE IN CARRYING OUT TRANSACTIONS USING THE SOFTWARE, FOR ANY REASON WHATSOEVER.

11.1.3. IN ADDITION TO THE PROVISIONS OF CLAUSE 11.1.2, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR:

11.1.3.1. ANY INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGE ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, WHETHER NEGLIGENT OR NOT, INCLUDING WITHOUT LIMITATION, LOSS OF PROFIT OR ANTICIPATED SAVINGS, WASTED EXPENDITURE AND SPECIAL DAMAGES;

11.1.3.2. ANY DIRECT LOSS OR DAMAGE ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, UNLESS SUCH LOSS OR DAMAGE IS A DIRECT RESULT OF THE OTHER PARTY'S WILFUL MISCONDUCT.

11.2. **COMPATIBILITY**

THE LICENSEE MAY ADD ITS OWN SOFTWARE TO THE SOFTWARE AND/OR CONNECT PERIPHERALS, E.G. PRINTERS AND MODEMS. HOWEVER, THE JSE DOES NOT WARRANT THAT THE SOFTWARE WILL FUNCTION SATISFACTORILY WITH ALL INTER-OPERATIVE HARDWARE OR SOFTWARE PROVIDED BY THE LICENSEE AND THE LICENSEE AGREES THAT THE JSE SHALL NOT BE LIABLE FOR THE FOLLOWING:

11.2.1. REDUCED EFFICIENCY OF THE SOFTWARE OR ONE OF ITS MODULES; OR

11.2.2. LOSSES (INCLUDING LOSS OF DATA) OR DAMAGE RESULTING FROM THE ADDITION TO THE SOFTWARE BY THE LICENSEE OF ANY SOFTWARE, DATA OR HARDWARE NOT FURNISHED BY THE JSE.

11.3. **INDEMNITY BY LICENSEE**

THE LICENSEE INDEMNIFIES AND HOLDS THE JSE HARMLESS FROM ANY DAMAGES, LOSS, COST OR LIABILITY (INCLUDING, WITHOUT LIMITATION, LEGAL FEES AND OTHER COSTS OF ENFORCING THIS LIABILITY) ARISING OUT OF OR RESULTING FROM ANY UNAUTHORIZED USE OR DISCLOSURE BY THE LICENSEE OR THE LICENSEE'S AGENTS OF THE SOFTWARE OR ANY INFORMATION PROVIDED TO THE LICENSEE UNDER THIS AGREEMENT.

12. **CONNECTIVITY AND ACCESS TO THE JSE'S SYSTEMS**

This Agreement does not grant the LICENSEE connectivity or access to the JSE's Systems. This is granted if the LICENSEE complies with the JSE Rules, as published from time to time (where applicable), and if the LICENSEE also signs and complies with the JSE Services Agreement and such other instructions as may be issued by the JSE from time to time.

13. **DISASTER RECOVERY FOR TRADING ON THE JSE**

13.1. With regard to disaster situations, the JSE offers two possibilities to LICENSEES who use the Software for trading on the JSE (in the sense that the LICENSEE is authorized to enter orders into the JSE's Systems):

13.1.1. the LICENSEE may select the relevant Software in the TOF, for use at the LICENSEE's disaster recovery Site. Such Software may only be used at the LICENSEE'S disaster Site and may not be used simultaneously with Software that is used at the LICENSEE's normal operational Site/s. In the event of a disaster situation, the LICENSEE must notify the JSE immediately when the LICENSEE switches over to the LICENSEE's disaster recovery Site; or

- 13.1.2. the LICENSEE may elect in the TOF to use the JSE's disaster facility, on the basis that the LICENSEE acknowledges that this facility will be shared with other LICENSEES who elect to use this facility and will have to be used under such other conditions as the JSE may stipulate from time to time.
- 13.2. Both of the above options will be subject to payment of the relevant fees set out in the JSE's price list from time to time.

14. **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 be 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 Arbitration**

Any dispute arising out of or in connection with this Agreement or the subject matter of this Agreement shall be decided by arbitration as set out in this clause.

14.3. **Appointment of Arbitrator**

- 14.3.1. 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 ten days after either party in writing calls for arbitration, the arbitrators shall be an attorney or advocate nominated by the Registrar of AFSA for the time being.
- 14.3.2. 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, and a copy shall be furnished to the other party who may, within seven days, submit written comments on the request to the addressor of the request.

14.4. **Venue And Period for Completion of Arbitration**

The arbitration shall be held in Sandton, South Africa and the parties shall endeavour to ensure that it is completed within ninety days after written notice requiring the claim to be referred to arbitration is given.

14.5. **Arbitration Act – rules**

The arbitration shall be governed by the Arbitration Act, 1965, as amended from time to time, or any replacement Act and shall take place in accordance with the Commercial Arbitration Rules of AFSA.

14.6. **Urgent Relief**

Nothing in this clause shall preclude any party from seeking an urgent interdict or urgent relief from a court of competent jurisdiction.

15. **ASSIGNMENT**

15.1. The LICENSEE may not assign its rights or obligations under the Agreement, save with the written consent of the JSE.

15.2. The JSE is entitled to assign its rights and obligations under this Agreement to any entity formed for the purposes of operating the JSE'S business, on notice to the LICENSEE.

16. **CONFIDENTIALITY**

16.1. The Parties acknowledge that during the period of this Agreement, the Parties may become privy to each other's material, proprietary and confidential information.

16.2. Accordingly each Party undertakes not to reveal the documents or information disclosed by the other Party in connection with the performance of this Agreement, unless requested to do so by government agencies or the courts.

16.3. Each Party undertakes to ensure that its employees comply with this Section. Each Party agrees to limit the disclosure of proprietary or confidential information and material to its own employees who need to know such information to carry out the intent of this Agreement.

16.4. The undertaking contained in this clause shall be valid and binding for the duration of this Agreement and shall continue for twelve months after the expiry or termination of this Agreement.

16.5. Should either Party fail to observe this confidentiality undertaking, the other Party reserves the right to claim damages in the amount of the loss sustained.

16.6. The Parties agree that this confidential information referred to in this Section is confidential for the purposes of section 37(1) of the Promotion of Access to Information Act, 2000, as amended from time to time.

17. **FORCE MAJEURE**

Neither Party shall be liable to the other for the non-performance or delays in the performance of an obligation under the Agreement due to the occurrence of a case of force majeure, including but not limited to a natural disaster, war, civil unrest, fire, flooding, explosion, failure of the telecommunications exchanges, employee/management disputes or strikes, or any act or decision of a government authority.

18. **BREACH**

18.1. For the purposes of this clause, an "Aggrieved Party" shall be a party to this Agreement who has suffered a breach of this Agreement.

18.2. Subject to any express provision to the contrary in this Agreement, if either party ("the Defaulting Party"):

- 18.2.1. fails to pay an amount by due date;
- 18.2.2. breaches any of the provisions of clause 4 of this Agreement;
- 18.2.3. breaches any other provision of this Agreement and fails to remedy the breach within such period as the parties may agree, and failing such agreement within 10 days of written notice to do so, provided that if the breach can reasonably be remedied within a shorter period, the Aggrieved Party may specify that shorter period in the notice;
- 18.2.4. commits a second or subsequent breach of this Agreement after having remedied an earlier similar breach during the preceding 12 months after written notice to do so;
- 18.2.5. takes steps to place itself, or is placed, in liquidation, whether voluntary or compulsory, or under judicial management, in either case whether provisionally or finally;
- 18.2.6. takes steps to deregister itself or is deregistered;
- 18.2.7. commits an act which would be an act of insolvency as at the date of signature of this Agreement, as defined in the South African Insolvency Act, 1936, as amended from time to time, or any replacement Act, if committed by a natural person; or
- 18.2.8. takes or is subject to any action similar to that specified above in any jurisdiction outside South Africa, the Defaulting Party shall be in default.
- 18.3. If a party is in default as set out above, the Aggrieved Party shall be entitled, in its sole discretion and in addition to all other remedies at law, expressly provided for in this Agreement, or otherwise, to:
 - 18.3.1. cancel this Agreement forthwith; or
 - 18.3.2. uphold this Agreement on condition that this Agreement will be automatically amended so that the Aggrieved Party may at any time thereafter terminate this Agreement upon 30 days written notice to the Defaulting Party.
- 18.4. If the LICENSEE is in default as set out above, the JSE shall be entitled, in addition to all other remedies at law, to suspend performance of the JSE's obligations during the default or breach, without notice. In the event that the JSE resumes its obligations following a suspension due to a default on the part of the LICENSEE, in accordance with this clause or otherwise in accordance with this Agreement, then the cost of such resumption of the JSE's obligations (including but not limited to reconnection, re-conformance and re-testing charges) shall be for the LICENSEE's account.
- 18.5. Where the Aggrieved Party becomes aware that circumstances exist pursuant to which it has grounds for a claim against the other Party under or in connection with this Agreement, the Aggrieved Party shall not be entitled to pursue such claim after the second anniversary of the date on which the Aggrieved Party first became so aware.

19. ADDRESSES

- 19.1. The JSE chooses the following addresses at which written notice may be given and documents in legal proceedings may be served:
 - 19.1.1. for service of legal documents: One Exchange Square
Gwen Lane

Sandown 2196

- 19.1.2. for written notice: Private Bag X991174
Sandton
2146
fax: 27 11 520 8604

marked for the attention of the Company Secretary.

- 19.2. The LICENSEE chooses the addresses in the TOF at which written notice may be given and documents in legal proceedings may be served.
- 19.3. Notices given to the above addresses shall be deemed to have been duly given:
- 19.3.1. 7 days after posting, if posted by registered post to the party's postal address;
- 19.3.2. on delivery, if delivered to the party's physical address; and
- 19.3.3. on despatch, if sent to the party's then fax number.
- 19.4. A written notice actually received by a party shall be adequate notice to it notwithstanding that it was not sent or delivered to its chosen address.
- 19.5. A party may change that party's addresses for this purpose, by notice in writing to the other party, provided that the new address for service of legal documents, includes a physical address in the Republic of South Africa.

20. MISCELLANEOUS PROVISIONS

20.1. Information

The LICENSEE may not disseminate Information to third parties or use Information internally in the LICENSEE'S business, without first entering into and following the provisions of the JSE Information Distribution Agreement or the equivalent NSX agreement.

20.2. Entire Contract

This Agreement contains all the provisions agreed on by the parties with regard to the subject matter of this Agreement and the parties waive the right to rely on any alleged provision not contained in this Agreement.

20.3. No Representations

Neither party may rely on any representation which allegedly induced that party to enter into this Agreement, unless the representation is recorded in this Agreement.

20.4. 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.

20.5. **Severability**

If any provision of this Agreement is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of all other provisions (and, if applicable, the remainder of the provision in question) shall not be affected.

20.6. **Assignment**

20.6.1. Neither party may assign or otherwise transfer to a third party any right or obligation under this Agreement without the written consent of the other party, which consent shall not be unreasonably withheld or delayed.

20.6.2. Notwithstanding the provisions of clause 19.6.1, the JSE shall be entitled, without the consent of the LICENSEE, to assign the JSE's rights and obligations under this Agreement to a company or entity which will continue to operate the business of the JSE, or any part thereof. In such circumstances the JSE will notify the LICENSEE of such assignment.

20.7. **Indulgences**

The grant of any indulgences 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.

20.8. **Counterparts**

This Agreement shall be capable of being signed and executed in one or more counterparts, each of which, when read together, shall comprise one and the same Agreement.

20.9. **Applicable Law**

This Agreement shall be interpreted and implemented in accordance with the laws of the Republic of South Africa.

20.10. **Jurisdiction**

Subject to the provisions of the clause in this Agreement entitled "Arbitration":

20.10.1. the parties shall be entitled, but not obliged, to institute any proceedings arising out of in connection with this Agreement in any of the South African Magistrates' Courts having jurisdiction;

20.10.2. should either party elect to institute proceedings in the South African High Courts, both parties consent to the non-exclusive jurisdiction of the High Court in Johannesburg.

Execution

Signed by
For JSE Limited

Signature

Name:

Title:

Who warrants that he/she is duly authorised

Date:

Place:

For the LICENSEE

Signature

Name:

Title:

Who warrants that he/she is duly authorised

Date:

Place:

Signature

Name:

Title:

Who warrants that he/she duly authorised

Date:

Place: