

## SOFTWARE LICENSE AGREEMENT

Made and entered into by and between

### QUANTUM SOLUTIONS

a Globus T24 service provider company, herein represented by Mr Jakes van den Berg, in his capacity as Partner (Research, Technology and Planning) and duly authorized

(Hereinafter referred to as “**Quantum Solutions**”)

and

**XXX**

A private company with limited liability incorporated and existing under the laws of South Africa

(Registration number: **xxx**)

Hereinafter referred to as “Licensee”

Jointly hereafter referred to as the “Parties”

## RECITALS

- A. QUANTUM SOLUTIONS is the owner of the copyright to the Software and Documentation (as defined below).
- B. QUANTUM SOLUTIONS desires to grant to Licensee and Licensee desires to obtain from QUANTUM SOLUTIONS a non-exclusive license to use the Software and Documentation solely in accordance with the terms and on the conditions set forth in this Agreement.

## NOW, THEREFORE, the parties hereto agree as follows:

### 1. DEFINITIONS

- 1.1 "**Agreement**" shall mean this License Agreement and any Annexures thereto.
- 1.2 "**Software**" shall mean the computer programme and xxx, including all user interface forms, designed and developed for the purposes of xxx, and any subsequent error corrections or updates supplied to Licensee by QUANTUM SOLUTIONS pursuant to this Agreement.
- 1.3 "**Documentation**" shall mean all manuals, user documentation, and other related materials pertaining to the Software which are furnished to Licensee by QUANTUM SOLUTIONS in connection with the Software.
- 1.4 "**Designated Equipment**" shall mean any personal computers, workstations, servers or the like owned or rented by Licensee for specific use by Licensee.
- 1.5 "**Royalty Fee**" shall mean the fee payable by Licensee to QUANTUM SOLUTIONS for use of the Software.
- 1.6 "**Site**" shall mean any single site in a specific geographical location of Licensee.
- 1.7 "**Designated Developer**" shall mean the software programmers designated by QUANTUM SOLUTIONS as the authorised software developers. xxx (Registration number: xxx) are currently the Designated Developers. The Designated Developers can be changed if agreed in writing by both parties.

### 2. GRANT OF RIGHTS

The License granted for Software under this Agreement authorizes Licensee on a non-exclusive basis to use the Software on Designated Equipment at a single Site.

### 3. DURATION AND RENEWAL

- 3.1 The duration of this Agreement is from the date of last signature of this Agreement for a period of three (3) years.
- 3.2 At the end of the period of this Agreement, another Agreement will be entered into which will provide for an annual Royalty Fee in consideration of updates and modifications provided.

### 4. DELIVERY AND INSTALLATION

- 4.1 QUANTUM SOLUTIONS shall deliver to Licensee a master copy of the Software and Documentation licensed hereunder in object code form, suitable for reproduction, in electronic files only.
- 4.2 Licensee shall be obliged to use the Designated Developers, at a market-related rate to be agreed between Licensee and the Designated Developers to install the Software and make any modifications necessary to ensure the Software works correctly on Licensee's premises.
- 4.3 Any training or assistance required by Licensee that must be performed by QUANTUM SOLUTIONS staff will be at a rate of Rxxx per staff member per hour or part thereof, plus any disbursements and travel expenses, excluding Value Added Tax.

## 5. MODIFICATIONS

- 5.1 QUANTUM SOLUTIONS will provide Licensee with error corrections, bug fixes, patches or other updates to the Software licensed hereunder in object code form to the extent available in accordance with QUANTUM SOLUTIONS's release schedule for the Duration of this Agreement.
- 5.2 Licensee may, from time to time, request that QUANTUM SOLUTIONS incorporate certain features, enhancements or modifications into the Software. QUANTUM SOLUTIONS may, in its sole discretion, undertake to incorporate such changes and distribute the Software so modified to all or any of QUANTUM SOLUTIONS's licensees.
- 5.3 Any modifications to the Software required by Licensee that will not be undertaken by QUANTUM SOLUTIONS may only be done by the Designated Developers at a market-related rate to be agreed between Licensee and the Designated Developers.
- 5.4 All error corrections, bug fixes, patches, updates or other modifications shall be the sole property of QUANTUM SOLUTIONS.

## 6. COPIES

- 6.1 Except as specifically set forth herein, no Software or Documentation which is provided by QUANTUM SOLUTIONS pursuant to this Agreement in human readable form, such as written or printed documents, shall be copied in whole or in part by Licensee without QUANTUM SOLUTIONS's prior written agreement.
- 6.2 Except as specifically set forth herein, any Software provided in machine readable form may not be copied by Licensee in whole or in part, except for Licensee's backup or archive purposes. Licensee agrees to maintain appropriate records of the number and location of all copies of the Software and make such records available upon QUANTUM SOLUTIONS's request. Licensee further agrees to reproduce all copyright and other proprietary notices on all copies of the Software in the same form and manner that such copyright and other proprietary notices are originally included on the Software.

## 7. LICENSE FEES AND PAYMENT

- 7.1 In consideration of the license rights granted in Clause 2 above, Licensee shall pay a Royalty Fee in the amount of **XXX** Thousand Rand (**Rxx 000**) excluding Value Added Tax.
- 7.2 The Royalty Fee shall be paid within 30 days of the date of last signature of this Agreement.

## 8. PROTECTION OF SOFTWARE

- 8.1 Licensee agrees to respect and not to remove, obliterate, or cancel from view any copyright, trademark, confidentiality or other proprietary notice, mark, or legend appearing on any of the Software or output generated by the Software, and to reproduce and include same on each copy of the Software.
- 8.2 Licensee agrees not to modify, reverse engineer, disassemble, or decompile the Software, or any portion thereof.
- 8.3 Licensee further acknowledges that all copies of the Software in any form provided by QUANTUM SOLUTIONS or made by Licensee are the sole property of QUANTUM SOLUTIONS and/or its suppliers. Licensee shall not have any right, title, or interest to any such Software or copies thereof except as provided in this Agreement, and further shall secure and protect all Software and Documentation consistent with maintenance of QUANTUM SOLUTIONS's proprietary rights therein.

## 9. CONFIDENTIALITY

- 9.1 Licensee hereby acknowledges and agrees that the Software and Documentation constitute and contain valuable proprietary products and trade secrets of QUANTUM SOLUTIONS and/or its suppliers, embodying substantial creative efforts and confidential information, ideas, and expressions. Accordingly, Licensee agrees to treat (and take precautions to ensure that its employees treat) the Software and Documentation as confidential in accordance with the confidentiality requirements and conditions set forth below.
- 9.2 Each party agrees to keep confidential all confidential information disclosed to it by the other party in accordance herewith, and to protect the confidentiality thereof in the same manner it protects the confidentiality of similar information and data of its own (at all times exercising at least a reasonable degree of care in the protection of confidential information); provided, however, that neither party shall have any such obligation with respect to use or disclosure to others not parties to this Agreement of such confidential information as can be established to: (a) have been known publicly; (b) have been known generally in the industry before communication by the disclosing party to the recipient; (c) have become known publicly, without fault on the part of the recipient, subsequent to disclosure by the disclosing party; (d) have been known otherwise by the recipient before communication by the disclosing party; or (e) have been received by the recipient without any obligation of confidentiality from a source (other than the disclosing party) lawfully having possession of such information.
- 9.3 Licensee acknowledges that the unauthorized use, transfer or disclosure of the Software and Documentation or copies thereof will (i) substantially diminish the value to QUANTUM SOLUTIONS of the trade secrets and other proprietary interests that are the subject of this Agreement; (ii) render QUANTUM SOLUTIONS's remedy at law for such unauthorized use, disclosure or transfer inadequate; and (iii) cause irreparable injury in a short period of time. If Licensee breaches any of its obligations with respect to the use or confidentiality of the Software or Documentation, QUANTUM SOLUTIONS shall be entitled to equitable relief to

protect its interests therein, including, but not limited to, preliminary and permanent injunctive relief.

- 9.4 Licensee's obligations under this Clause 9 will survive the termination of this Agreement or of any license granted under this Agreement for whatever reason.

## **10. WARRANTIES AND SUPERIOR RIGHTS**

- 10.1 QUANTUM SOLUTIONS represents its belief that it is the owner of the entire right, title, and interest in and to Software, and that it has the sole right to grant licenses thereunder, and that it has not knowingly granted licenses thereunder to any other entity that would restrict rights granted hereunder except as stated herein.
- 10.2 QUANTUM SOLUTIONS represents and warrants to Licensee that the Software, when properly installed by the Designated Developers on the Designated Equipment, will perform substantially as described in QUANTUM SOLUTIONS's then current Documentation for such Software for a period of ninety (90) days from the date of last signature of this Agreement.
- 10.3 Notwithstanding the warranty provisions set forth in Clause 10.2 above, all of QUANTUM SOLUTIONS's obligations with respect to such warranties shall be contingent on Licensee's use of the Software in accordance with this Agreement and in accordance with QUANTUM SOLUTIONS or the Designated Developer's instructions provided by QUANTUM SOLUTIONS in the Documentation, as such instructions may be amended, supplemented, or modified by QUANTUM SOLUTIONS from time to time. QUANTUM SOLUTIONS shall have no warranty obligations with respect to any failures of the Software which are the result of accident, abuse, misapplication, extreme power surge or extreme electromagnetic field.
- 10.5 QUANTUM SOLUTIONS's entire liability and Licensee's exclusive remedy shall be, at QUANTUM SOLUTIONS's option, either (a) return of the price paid or (b) repair or replacement of the Software upon its return to QUANTUM SOLUTIONS; provided QUANTUM SOLUTIONS receives written notice from Licensee during the warranty period of a breach of warranty. Any replacement Software will be warranted for the remainder of the original warranty period or thirty (30) days, whichever is longer.
- 10.6 QUANTUM SOLUTIONS does not represent or warrant that all errors in the Software and Documentation will be corrected. The warranties stated in Clause 10.2 above are the sole and the exclusive warranties offered by QUANTUM SOLUTIONS. There are no other warranties respecting the Software and Documentation or services provided hereunder, either express or implied, including but not limited to any warranty of design, merchantability, or fitness for a particular purpose, even if QUANTUM SOLUTIONS has been informed of such purpose. No agent of QUANTUM SOLUTIONS is authorized to alter or exceed the warranty obligations of QUANTUM SOLUTIONS as set forth herein.
- 10.7 Licensee acknowledges and agrees that the consideration which QUANTUM SOLUTIONS is charging hereunder does not include any consideration for assumption by QUANTUM SOLUTIONS of the risk of Licensee's consequential or incidental damages which may arise in connection with Licensee's use of the Software and Documentation. Accordingly, Licensee agrees that QUANTUM SOLUTIONS shall not be responsible to Licensee for any loss-of-profit, indirect, incidental, special, or consequential damages arising out of the licensing or use of the Software or Documentation. Any provision herein to the contrary notwithstanding, the maximum liability of QUANTUM SOLUTIONS to any person, firm or corporation whatsoever arising out of or in the connection with any license, use or other employment of any Software delivered to Licensee hereunder, whether such liability arises from any claim based on breach or repudiation of contract, warranty, tort or otherwise, shall in no case exceed the actual price paid to QUANTUM SOLUTIONS by Licensee for the

Software whose license, use, or other employment gives rise to the liability. The essential purpose of this provision is to limit the potential liability of QUANTUM SOLUTIONS arising out of this Agreement. The parties acknowledge that the limitations set forth in this Clause 10 are integral to the amount of consideration levied in connection with the license of the Software and Documentation and any services rendered hereunder and that, were QUANTUM SOLUTIONS to assume any further liability other than as set forth herein, such consideration would of necessity be set substantially higher.

## 11. INDEMNIFICATION

- 11.1 QUANTUM SOLUTIONS shall indemnify, hold harmless and defend Licensee against any action brought against Licensee to the extent that such action is based on a claim that the unmodified Software, when used in accordance with this Agreement, infringes a copyright and QUANTUM SOLUTIONS shall pay all costs, settlements and damages finally awarded; provided, that Licensee promptly notifies Institution in writing of any claim, gives QUANTUM SOLUTIONS sole control of the defense and settlement thereof and provides all reasonable assistance in connection therewith. If any Software is finally adjudged to so infringe, or in QUANTUM SOLUTIONS's opinion is likely to become the subject of such a claim, QUANTUM SOLUTIONS shall, at its option, either: (i) procure for Licensee the right to continue using the Software (ii) modify or replace the Software to make it noninfringing, or (iii) refund the fee paid, less reasonable depreciation, upon return of the Software. QUANTUM SOLUTIONS shall have no liability regarding any claim arising out of: (w) use of other than a current, unaltered release of the Software unless the infringing portion is also in the then current, unaltered release, (x) use of the Software in combination with non-QUANTUM SOLUTIONS software, data or equipment if the infringement was caused by such use or combination, (y) any modification or derivation of the Software not specifically authorized in writing by QUANTUM SOLUTIONS or (z) use of third party software. The foregoing states the entire liability of QUANTUM SOLUTIONS and the exclusive remedy for licensee relating to infringement or claims of infringement of any copyright or other proprietary right by the Software.
- 11.2 Except for the foregoing infringement claims, Licensee shall indemnify and hold harmless System, QUANTUM SOLUTIONS, their Agents, officers, agents and employees from and against any claims, demands, or causes of action whatsoever, including without limitation those arising on account of Licensee's modification or enhancement of the Software or otherwise caused by, or arising out of, or resulting from, the exercise or practice of the license granted hereunder by Licensee, its sublicensees, if any, its subsidiaries or their officers, employees, agents or representatives.

## 12. BREACH

Should either party be in breach of any provision of this Agreement the aggrieved party shall by written notice give the offending party 14 working days in which to remedy the cause for complaint failing which the aggrieved party shall have the right to:

- 12.1 Grant the offending party further time to remedy the cause for complaint;
- 12.2 Apply to the Court for an injunctive order;
- 12.3 Refer the matter to arbitration as set out in terms of clause 14 hereof.

### **13. LATITUDE**

Any latitude or extension of time granted by one party to the other in respect of any provision in this Agreement shall not be deemed to be a waiver of any right that the aggrieved party may have in terms of Clause 14.

### **14. ARBITRATION AND JURISDICTION**

Should there be a dispute in regard to, but not limited to, the interpretation of the terms of this Agreement or the standards to be achieved in respect of the project as a whole or in relation to a part thereof, the parties shall agree on the selection of an Arbitrator who shall have the appropriate qualifications to tend to such dispute and:

- 14.1 Both parties shall draw up their contentions in respect of the dispute and shall forward same to the Arbitrator within 7 days of the Arbitrator's selection by the parties.
- 14.2 The Arbitrator may call upon the representatives of the parties either singly or together to elicit further information to assist the Arbitrator in making his / her decision.
- 14.3 The Arbitrator's decision shall be final.
- 14.4 Such arbitration proceedings shall not be subject to the Arbitrations Act 1965.
- 14.5 The Arbitrator shall make an award as to costs.
- 14.6 Should the parties be unable to agree on the selection of the sole Arbitrator to attend to the dispute, the matter shall be referred to the attorneys Joubert, Galpin and Searle Inc. which attorneys shall select an Arbitrator of their choice to arbitrate and the attorneys' decision in this regard shall be final.

### **15. ENTIRE AGREEMENT**

This Agreement, including its Annexures, shall constitute the entire Agreement and no other conditions, warranties, stipulations or representations shall be binding on the parties.

### **16. SIGNATORIES**

The signatories to this Agreement warrant that they are duly authorised to bind their respective employers, the QUANTUM SOLUTIONS and Licensee.

**17. DOMICILIA**

The parties choose as their respective domicilium citandi et executandi for purposes of this Agreement as set out hereunder:

**The QUANTUM SOLUTIONS:**

P.O. Box 353  
5 Loop street  
Ladybrand, 9745  
South Africa

Tel 051 924 2220  
www.t24quantum.com

**Licensee:**

xxx  
xxx  
xxx  
xxx

Tel: xxx  
Fax: xxx

Accepted for and on behalf of

**LICENSEE**

and duly authorised

**Signature:** .....

**Name:** .....

**Designation:** .....

**Date:** .....

**Place:** .....

Accepted for and on behalf of

**QUANTUM SOLUTIONS**

and duly authorised

**Signature:** .....

**Name:** Mr Jakes van den Berg  
.....

**Designation:** Research, Technology and Planning  
.....

**Date:** .....

**Place:** Ladybrand  
.....