



PLEASE READ THIS AGREEMENT CAREFULLY. BY USING ALL OR ANY PORTION OF THE SOFTWARE, OR BY PAYING FOR THE SOFTWARE BY ANY MEANS OFFERED BY K5 ERP SOLUTIONS, YOU ACCEPT ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT. YOU AGREE THAT, REGARDLESS OF WHETHER YOU SIGN THIS AGREEMENT OR NOT, THIS AGREEMENT IS ENFORCEABLE LIKE ANY WRITTEN NEGOTIATED AGREEMENT SIGNED BY YOU. IF YOU DO NOT AGREE, DO NOT USE THIS SOFTWARE.

THE TERMS AND CONDITIONS OF THIS AGREEMENT (“TERMS & CONDITIONS”) APPLY TO ANY AND ALL USE OF THE SOFTWARE BY YOU, WHETHER YOU ARE USING THE SOFTWARE PURSUANT TO ANY DEMO PERIOD, 45 DAY PERIOD - THE TERM OF THIS AGREEMENT WITH ANY DEMO LICENSE KEY, 45 DAY LICENSE KEY OR PERMANENT LICENSE KEY AND YOU AGREE TO BE BOUND BY THESE TERMS AND CONDITIONS REGARDLESS OF THE TYPE OF USE OF THE SOFTWARE BY YOU. This agreement (the “Agreement”) is between you (“you”, “your” “Licensee”) and K5 ERP Solutions Pty (Ltd), a corporation with its principal offices located at Durban South Africa, including its authorized suppliers (“K5 ERP Solutions” or “Licensor”).

ARTICLE 1: DEFINITIONS

1.1 The following terms have the following meanings:

“45 Day License Key” means the License Key sent to you via email from either K5 ERP Solutions directly or through a Re-Seller in order for you to Use the Software during the 45 Day Period; and

“45 Day Period” means the forty five (45) day period commencing on the Effective Date, within which you must pay the License Fees and the Initial Maintenance Fees in full, except as otherwise agreed in writing by the parties;

“Additional Maintenance Periods” means the term of any Renewal Maintenance Period or Restart Maintenance Period;

“Agreement” means this Software License and Maintenance Agreement, as amended from time to time together with all terms incorporated by specific reference to them in this Agreement;

“Computer” means one central processing unit (“CPU”) that accepts information in digital or similar form and manipulates it for a specific result based on a sequence of instructions;

“Demo License Key” means the License Key provided to you either via email or via other means, from either K5 ERP Solutions directly or through a Re-Seller in order for you to preview the Software during the Demo Period;

“Demo Period” means the fourteen (14) day period in which you may preview the Software using the Demo License Key;

“Documentation” means the explanatory written materials or files related to the Software as available on request from K5 ERP Solutions;

“Effective Date” means the date from which the Software has been licensed, not including Use during the Demo Period;

“Initial Maintenance Fee” means the Maintenance Fees payable by you for the Initial Maintenance Period;

“License Fees” means the license fees payable by you as specified in a purchase order in order to Use the Software in accordance with this Agreement;



“License Keys” means the various alpha numeric codes sent to you via email from either K5 ERP Solutions directly or through a Re-Seller which allows your Users to access and Use the Software during the Demo Period, 45 Day Period or the Term of this Agreement including, without limitation, any Demo License Key, 45 Day License Key or Permanent License Key;

“Maintenance Fee” means K5 ERP Solutions’ then current annual fees or the fee otherwise agreed to by the parties in writing payable by you in order for you to receive Maintenance for the Software;

“Permanent License Key” means the license key sent to you via email from either K5 ERP Solutions directly or through a Re-Seller after the previously agreed on 45 Day Period and after K5 ERP Solutions has received full payment for the license you have purchased to Use the Software, in order for the Users to access and Use the Software during the Term;

“Renewal Maintenance Fees” means the Maintenance Fees payable by you for any Renewal Maintenance Period;

“Re-Seller” means a third party authorized by K5 ERP Solutions to sell licenses to use the Software;

“Restart Maintenance Fee” means the Maintenance Fees payable by you for any Restart Maintenance Period;

“SAP System Landscape”, “System Landscape” or “Landscape” means a collection of SAP application servers all having the same installation number as provided by SAP or SAP AG; Each landscape may have a maximum of 3 SAP systems therein;

“SAP System” means a collection of servers used to host one instance of a SAP server application; Each SAP System is associated with a unique 3 character SAP System ID;

“Software” means the K5 ERP Solutions product licensed for Use by you as specified in a purchase order, and all related product documentation, tools and utilities, and miscellaneous technical information as well as any upgrades, updates, fixes and new releases as provided from time to time by K5 ERP Solutions pursuant to this Agreement;

“Term” means the term of this Agreement commencing on the Effective Date and continuing unless terminated in accordance with this Agreement;

“Use”, “Used”, or “Using” means to access, install, download, copy or otherwise benefit from using the functionality of the Software;

“User” means an individual, representative or contractor within your organization designated or allowed to access and Use the Software according to this Agreement;

“Web Server” means any web server in your company network which has at least one CPU, used to serve web pages over internet, extranet or intranet;

“Installation Number” means the installation number provided by SAP or SAP AG to you for each Landscape in your SAP environment; each unique installation number signifies a unique Landscape.

1.2 The following terms are defined in the Sections of the Agreement referred to:

“Initial Maintenance Period” has the meaning specified in Section 9.3(a);

“Maintenance” has the meaning specified in Section 9.1;



“Renewal Maintenance Period” has the meaning specified in Section 9.3(b);

“Restart Maintenance Period” has the meaning specified in Section 9.3(c); and

“Restart Order Date” has the meaning specified in Section 9.4(c).

ARTICLE 2: LICENSE TO USE THE SOFTWARE

- 2.1 Upon acceptance of this Agreement and subject to continued compliance with this Agreement, K5 ERP Solutions hereby grants you a non-exclusive, non-transferable, perpetual (unless terminated pursuant to this Agreement) license and limited right to install one copy of the Software for each SAP System in a licensed SAP System Landscape for the sole and exclusive purpose of allowing your Users to Use the Software through commands, data or instructions (i.e. scripts) from another Computer in or accessing your network, provided you have paid the applicable License Fee for each SAP System Landscape. For clarity, no person is entitled to Use the Software in a SAP System Landscape unless the applicable License Fee has been paid for such SAP System Landscape. You agree not to sell, assign, sublicense, rent, lease, grant a security interest in, or otherwise transfer the license(s) granted hereunder to enable Use of the Software, either directly or indirectly or through commands, data or instructions from or to a computer not part of your internal network, other than as permitted in Article 19. You also agree not to Use the Software for Internet, web hosting or service bureau activities.
- 2.2 You agree to: (a) notify each User of the terms of this Agreement prior to obtaining access to the Software; (b) supervise and control the Use of the Software in accordance with the terms of this Agreement; and (c) not receive any form of payment from any user for Use of the Software.
- 2.3 You may make a single copy of the Software for archival purposes once you have received Permanent License Keys, provided: (a) the copy contains all of the original Software's proprietary notices; (b) it is not installed or used on any Computer; (c) you maintain accurate and up-to-date records of the location of the copy made; and (d) you agree not to transfer the back-up copy of the Software unless in accordance with the assignment provisions of this Agreement.
- 2.4 The license granted to you hereunder is not contingent upon the purchase of Maintenance.

ARTICLE 3: LICENSE RESTRICTIONS

You agree not to (and will not allow, direct or authorize any third party or any User to):

- 3.1 use, or permit any other person to use, the Software, including permitting others to access the Software for their own purpose, or enabling others to use your Software registration or access codes, keys, passwords, or serial number(s) (if any), including without limitation, any License Keys, except in accordance with the Documentation and this Agreement, unless previously agreed upon in writing;
- 3.2 reproduce, adapt, vary, modify, decompile, enhance, translate, attempt to reverse engineer, reverse engineer, reverse assemble, create a derivative work of, or otherwise attempt to discover any source code of the Software or communicate the same to any other person, or otherwise reduce or attempt to reduce the Software to human perceivable form;
- 3.3 develop or write any software or other program or have any software or other program written or developed based on the Software or based on any of the confidential information referred to in Article 4;
- 3.4 copy or distribute the Software by any means, other than as permitted in Article 2;
- 3.5 sell, assign, sublicense, rent, lease, grant a security interest in, or otherwise transfer any right in the Software or distribute or network any portion of the Software or related materials, other than as permitted in Article 19;
- 3.6 remove any proprietary notices or labels from the Software;
- 3.7 install the Software on any SAP System which is unlicensed; and



- 3.8 use the name, or trade-marks of the Licensor or of any of its affiliates, licensors, third party content or service providers, distributors, dealers or authorized suppliers, ("Representatives") in any advertising, publicity releases, reference lists, media such as but not limited to CD-ROM or sales presentations, without its prior written consent.

ARTICLE 4: CONFIDENTIAL INFORMATION

- 4.1 You acknowledge and agree that the logic, structure, sequence and organization of the Software are the valuable trade secrets of the Licensor. All information, data, drawings, specifications, documentation, software listings, source or object code which the Licensor may have imparted and may from time to time impart to you, relating to the Software or any other K5 ERP Solutions product, is proprietary and confidential.
- 4.2 You agree to hold such trade secrets and proprietary information in confidence and further agree to use the same solely in accordance with the provisions of this Agreement and will not at any time during or after expiry or termination of this Agreement, disclose the same, whether directly or indirectly, to any third person without the Licensor's prior written consent.
- 4.3 K5 ERP Solutions agrees to hold any confidential information of yours which may be disclosed to K5 ERP Solutions pursuant to this Agreement in confidence and further agrees to use the same solely in accordance with the provisions of this Agreement and will not at any time during or after expiry or termination of this Agreement, disclose the same, whether directly or indirectly, to any third person without the Licensee's prior written consent; provided that any confidential information of yours disclosed to K5 ERP Solutions, in writing, pursuant to this Agreement must be clearly labeled "confidential" or words of similar import at the time of disclosure.
- 4.4 In the event that the recipient of confidential information is required by law or by judicial or administrative process to disclose confidential information, the recipient shall promptly notify the disclosing party, who may take available steps to oppose such law or process. However, if the recipient is legally obliged, in the reasonable opinion of its counsel, to disclose confidential information or become liable for contempt or suffer some other penalty, it may disclose such information, but only to the extent that it is so obliged, without liability to the disclosing party under this Agreement.
- 4.5 The confidentiality obligations herein shall not apply to the extent that any of the confidential information is: (i) lawfully known to the recipient prior to its disclosure by the disclosing party, and such knowledge is not a direct or indirect result of a breach of any obligation by any third party; (ii) now is or later becomes in the public domain other than as a result of a breach by the recipient or any of its representatives of their obligations hereunder; (iii) received subsequently by the recipient from a third party who has the lawful right to disclose same; or, (iv) independently developed by the recipient without reference to the confidential information received hereunder, as evidenced by recipient's records.

ARTICLE 5: ADDITIONAL USER LICENSES

You may purchase licenses to install the Software on additional SAP Landscapes at any time during the Term by contacting K5 ERP Solutions or a Re-seller. The License Fees for such additional licenses will be K5 ERP Solutions' then current per System Landscape charge.

ARTICLE 6: PAYMENT OF LICENSE FEES

If you have purchased a license to Use the Software and elected to pay the License Fees within the 45 Day Period, you must pay the License Fees within the 45 Day Period in order to receive the corresponding number of Permanent License Keys to Use the Software. If License Fees are not paid within such time and remain unpaid for five (5) business days following notice of late payment from Licensor, then you will, upon written instruction from



Licensor reflecting the same, not be entitled to any Permanent License Keys, and at the expiry of the 45 Day Period the Software will automatically become unusable; In the event that the 45 Day Period expires and you have not paid for a Permanent License, you covenant to immediately cease using the unlicensed Software, destroy any and all License Keys in your possession, and delete all files containing the Software from your computer, and send confirmation of same to K5 ERP Solutions by email within ninety (90) days of such deletion and destruction. You agree and acknowledge that any use of the Software or License Keys after such refund or return of Software constitutes infringement of copyright and other valuable intellectual property rights in the Software and K5 ERP Solutions shall have the right to any and all remedies at law or in equity for such infringement and/or misuse.

ARTICLE 7: RE-SELLERS

You acknowledge and agree that any Re-Seller from whom you may have purchased a license to Use the Software, has no authority to make on Licensor's behalf any product representations and warranties not made by K5 ERP Solutions. K5 ERP Solutions has no responsibility for any representations or warranties made by a Re-Seller except as specifically set out in this Agreement. You will not be entitled to use the Software after the 45 Day Period or to continued Maintenance of the Software unless K5 ERP Solutions has received the License Fees and Maintenance Fees in full in accordance with this Agreement directly from you or, if you have ordered the Software through a Re-Seller, from the Re-Seller, even if you have paid the Re-Seller. If you have paid the Reseller and the Re-Seller has not paid K5 ERP Solutions, your only recourse for non-payment by the Re-Seller is to the Re-Seller, not K5 ERP Solutions.

ARTICLE 8: REFUND/RETURN OF SOFTWARE

If for any reason you receive a refund for the license fee payable for the Software from K5 ERP Solutions or a third party, including a credit card company, you covenant to immediately cease using the Software that corresponds to the refund, destroy any and all License Keys in your possession, and delete all files containing the Software from your computer, and send confirmation of same to K5 ERP Solutions by email within ninety (90) days of such deletion and destruction. You agree and acknowledge that any use of the Software or License Keys after such refund or return of Software constitutes infringement of copyright and other valuable intellectual property rights in the Software and K5 ERP Solutions shall have the right to any and all remedies at law or in equity for such infringement and/or misuse.

ARTICLE 9: SUPPORT AND MAINTENANCE

9.1 **K5 ERP Solutions' Obligations.** The Licensor agrees to provide the following maintenance and support services ("Maintenance") for the Initial Maintenance Period and any Additional Maintenance Periods provided that the Maintenance Fees are paid in accordance with this Agreement:

- a) Software Maintenance
 - Update and maintain the Software throughout the Initial Maintenance Period and any Additional Maintenance Periods and provide you with updates as and when they are released by Licensor from time to time. Updates do not include new modules or new products, which must be purchased separately. Licensor will provide Maintenance for at least the current and one (1) previous release of the Software. Licensor has no obligation to provide Maintenance for Software that was released prior to the one (1) previous release of the applicable Software, unless otherwise agreed to in writing under separate agreement or addendum and executed by both parties. All releases, updates and Service Releases (as hereinafter defined) shall be governed by this Agreement unless otherwise agreed to in writing under separate agreement or addendum and executed by both parties.



- Licensor will give Licensee thirty (30) days notice, if it intends to discontinue support for previous releases, which notice shall be posted on the Licensor's web site at www.k5erp.com and sent to Licensee by appropriate means.
- b) Service Release Packages Issued to Repair Software Defects
 - Deliver service release packages to repair defects from time to time ("Services Releases").
- c) Technical Product Support
 - Provide phone line support of the Software during the prime business hours as defined on the Licensor's web site at www.k5erp.com. Alternatively, the Licensee may use the postal service, e-mail, world wide web access, or other services to communicate with the Licensor.
 - Provide remote assistance in the installation of the Software.
 - Provide remote assistance related to questions on the operational use of the Software, not including formal training.
- d) Additional Services
 - If additional services are requested such as training, data migrations, consulting, implementation assistance, or on-site maintenance services, a professional services fee (as agreed to between the Licensee and Licensor) will be charged and the Licensee shall be fully responsible for all travel costs, communication costs, living expenses and other out-of-pocket expenses incurred by the Licensor's personnel, and all of these amounts shall be payable to the Licensor forthwith when invoiced. No fees in connection with additional services shall be incurred without Licensee's prior written consent.

9.2 Client Responsibilities. You assume full responsibility for the operating environment in which the Software is to function.

9.3 Maintenance Term & Termination

- a) Initial Maintenance Period: The Maintenance services shall commence as of the Effective Date and continue for one year thereafter (the "Initial Maintenance Period").
- b) Renewal Maintenance Periods: Upon expiration of the Initial Maintenance Period, Maintenance services may be purchased by the Licensee for additional one year time periods (the "Renewal Maintenance Periods") by payment of the applicable Renewal Maintenance Fee.
- c) Suspension: Licensor may suspend Maintenance if the invoice for Maintenance Fees, referred to below, is not paid by its due date. Subject to Section 9.3(d), Maintenance can be restored following suspension by payment of the invoiced Maintenance Fees.
- d) Contracting Maintenance after Lapse: If an invoice for Maintenance Fees, referred to below, is not paid within three hundred and sixty five (365) days of the date of the invoice, Maintenance may be purchased by the Licensee for one year time periods (the "Restart Maintenance Periods"), by payment of the applicable Restart Maintenance Fee.

9.4 Payment

- a) The Initial Maintenance Fee is due prior to the expiration of the 45 Day Period.
- b) Renewal Maintenance Fees will be invoiced at least thirty (30) days prior to each anniversary of the Effective Date and paid, in advance, by the anniversary of the Effective Date.
- c) Restart Maintenance Fees are due on the date Maintenance is invoiced after lapse (the "Restart Order Date"). Maintenance will not be provided until K5 ERP Solutions has received full payment of the Restart Maintenance Fees. Restart Maintenance Fees for subsequent years will be invoiced at least thirty (30) days prior to each anniversary of Restart Order Date and paid annually, in advance, by the anniversary of the Restart Order Date.
- d) You agree and acknowledge that Maintenance Fees are subject to increases on written notice to you delivered at least thirty (30) days prior to any anniversary of the Effective Date or Restart Order Date, as applicable. Any increase in Maintenance Fees is effective from the anniversary of the Effective Date or Restart Order Date, as applicable, following the date of the notice referred to in this Section 9.4(d).
- e) You agree and acknowledge that: (i) Renewal Maintenance Fees shall be based on the standard K5 ERP Solutions license fee for Use of the Software in effect on the date of delivery of the invoice; and (ii)



Restart Maintenance Fees shall be based on the standard K5 ERP Solutions license fee for Use of the Software in effect on the Restart Order Date.

- f) In the event that licenses for additional SAP Landscapes are purchased during the Term pursuant to Article 5, the Licensee shall be required to purchase Maintenance for the additional licenses for the period commencing on the date the additional licenses are purchased and ending on the final day of the Initial Maintenance Period, the Renewal Maintenance Period, or the Restart Maintenance Period, as applicable. If additional licenses are purchased after the final day of the Initial Maintenance Period and/or any Additional Maintenance Periods, the Licensee shall purchase Maintenance for any additional licenses for a period of one year commencing on the date of purchase of the additional licenses. The Maintenance Fee in effect for any additional licenses shall be based on the standard K5 ERP Solutions license fee for Use of the Software in effect at the time the additional licenses are purchased.

ARTICLE 10: K5 ERP SOLUTIONS INTELLECTUAL PROPERTY RIGHTS

The Software and each component part of the Software is the valuable, proprietary intellectual property of K5 ERP Solutions. You acknowledge that any and all of the trade-marks, trade names, copyrights, industrial designs, patents, trade secrets and other intellectual property rights used or embodied trade secrets in or in connection with the Software shall be and shall remain the sole property of K5 ERP Solutions, subject to the non-exclusive license granted in Article 2 hereof providing you with limited rights of Use subject to the terms and conditions of this Agreement. You further acknowledge and agree that ownership of, and title to, the Software and all subsequent copies thereof regardless of the form or media are held by the Licensor. OTHER THAN THE LIMITED LICENSE THIS AGREEMENT DOES NOT GIVE YOU ANY INTELLECTUAL PROPERTY RIGHTS IN THE SOFTWARE OR ANY COMPONENT PARTS OF THE SOFTWARE. The Software is protected by copyright laws and applicable international copyright treaties, as well as other relevant intellectual property laws and treaties. The Software is licensed, not sold to you according to the terms and conditions of this Agreement.

ARTICLE 11: WARRANTIES AND DISCLAIMER OF WARRANTIES

EXCEPT AS EXPRESSLY PROVIDED HEREIN, TO THE MAXIMUM EXTENT PERMITTED BY LAW, K5 ERP SOLUTIONS EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTE, EQUITY OR OTHERWISE, REGARDING THE SOFTWARE OR ITS PERFORMANCE, RELATED DOCUMENTATION, AND OTHER MATERIALS AND TECHNICAL SUPPORT, INCLUDING THEIR MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS. K5 ERP SOLUTIONS ALSO DOES NOT WARRANT THAT THE SOFTWARE SHALL PERFORM ERROR FREE OR WITHOUT INTERRUPTION, OR THAT IT IS FREE FROM BUGS, VIRUSES, ERRORS, OR OTHER PROGRAM LIMITATIONS, NOR DOES K5 ERP SOLUTIONS WARRANT ACCESS TO THE INTERNET OR ANY OTHER SERVICE INCLUDING THIRD PARTY SERVICES TO WHICH YOU MAY CONNECT THROUGH THE SOFTWARE, UNLESS OTHERWISE AGREED IN WRITING. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY K5 ERP SOLUTIONS, THEIR RESPECTIVE EMPLOYEES, DISTRIBUTORS, DEALERS OR AGENTS SHALL INCREASE THE SCOPE OF THE ABOVE REPRESENTATIONS, WARRANTIES OR CONDITIONS IN CONNECTION WITH THE SOFTWARE IN THIS AGREEMENT. K5 ERP SOLUTIONS MAKES NO WARRANTIES REGARDING THIRD PARTY PRODUCTS PURCHASED SEPARATELY BY YOU FROM A THIRD PARTY VENDOR.

Subject to the terms and conditions of this Agreement, K5 ERP Solutions represents and warrants that (a) the Software will operate in substantial conformity with K5 ERP Solutions' documentation; (b) except as set out in this Agreement, the Software as delivered shall not contain any timer, clock, counter or other limiting design or routine that will cause the Software to be rendered inoperable or otherwise incapable of being productively used by you after a certain number of times or after lapse of a certain time period or after occurrence or lapse of any similar



triggering factor or event; (c) it shall use industry standard virus detection software prior to delivery of the Software to you; and (d) it will use reasonable efforts to remedy material errors in the Software in a commercially reasonable timeframe.

ARTICLE 12: LIMITATION OF LIABILITY

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT FOR (i) INDEMNITY UNDER ARTICLE 14 BELOW, OR (ii) K5 ERP SOLUTIONS' WILLFUL MISCONDUCT OR GROSS NEGLIGENCE, K5 ERP SOLUTIONS HEREBY EXCLUDES FOR ITSELF AND ITS SUPPLIERS ANY LIABILITY IN EXCESS OF THE AMOUNT PAID, OR PAYABLE FOR THE SOFTWARE AND THE AMOUNT OF THE CURRENT YEAR'S MAINTENANCE IF PREPAID, PRO RATED FOR THE NUMBER OF DAYS REMAINING IN THE YEAR AFTER THE DATE OF THE LOSS (THE "COMPENSATION AMOUNT"), HOWSOEVER CAUSED, WHETHER BASED IN CONTRACT OR TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE. K5 ERP SOLUTIONS SHALL NOT BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES OF ANY KIND, OR FOR LOSS OF REVENUE OR PROFITS OR INVESTMENT OR THE LIKE, LOSS OF BUSINESS, LOSS OF INFORMATION OR DATA, OF OTHER FINANCIAL LOSS OR PERSONAL INJURY ARISING OUT OF OR IN CONNECTION WITH THE SALE, INSTALLATION, MAINTENANCE, USE, PERFORMANCE, FAILURE, OR INTERRUPTION OF THE SOFTWARE, EVEN IF THE LICENSEE OR ITS AUTHORIZED REPRESENTATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

IN THE EVENT ANY EXCLUSION, LIMITATION OR OTHER PROVISION CONTAINED IN THIS AGREEMENT SHALL BE HELD TO BE INVALID FOR ANY REASON AND THE LICENSOR BECOMES LIABLE FOR LOSS OR DAMAGE, EXCEPT FOR INDEMNITY PURSUANT TO ARTICLE 14, SUCH LIABILITY IS LIMITED TO THE COMPENSATION AMOUNT AND NO MORE.

ARTICLE 13: INDEMNITY OF LICENSEE

YOU AGREE TO INDEMNIFY AND HOLD HARMLESS K5 ERP SOLUTIONS, ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, CONTRACTORS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS FROM AND AGAINST ANY AND CLAIMS, PROCEEDINGS, ACTIONS OR DEMANDS WHICH MAY BE BROUGHT AGAINST LICENSOR OR ANOTHER OF THE INDEMNIFIED PARTIES AND AGREE TO INDEMNIFY AND HOLD LICENSOR AND THE OTHER INDEMNIFIED PARTIES HARMLESS FROM AND AGAINST, ANY AND ALL LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES) REAL OR PERCEIVED, THAT OCCUR, OR THAT LICENSOR MAY SUFFER, SUSTAIN OR INCUR, AS A RESULT OF, OR ARISING OUT OF ANY PROVEN INFRINGEMENT OF ANY SOUTH AFRICAN PATENTS, TRADE-MARKS, TRADE SECRETS, COPYRIGHTS, OR OTHER INTELLECTUAL PROPERTY RIGHTS HELD BY A THIRD PARTY RELATING TO THE SOFTWARE ARISING FROM: (a) CHANGES MADE TO THE SOFTWARE IN ACCORDANCE WITH YOUR WRITTEN SPECIFICATIONS, IF THE INFRINGEMENT WOULD NOT HAVE OCCURRED BUT FOR SUCH CHANGE; (b) YOUR USE OF THE SOFTWARE IN COMBINATION WITH ANY PRODUCTS NOT SUPPLIED BY K5 ERP SOLUTIONS IF THE INFRINGEMENT WOULD NOT HAVE OCCURRED BUT FOR SUCH COMBINATION; (c) YOUR USE OF THE SOFTWARE CONTRARY TO THE DOCUMENTATION; (d) YOUR FAILURE TO USE THE MOST CURRENT VERSION OF THE SOFTWARE WITHIN A REASONABLE TIME AFTER BEING INSTRUCTED TO DO SO TO AVOID AN INFRINGEMENT CLAIM; OR (e) YOU MODIFYING OR ALTERING THE SOFTWARE IN ANY WAY IF THE INFRINGEMENT WOULD NOT HAVE OCCURRED BUT FOR SUCH MODIFICATION OR ALTERATION BY YOU. YOU WILL HAVE SOLE CONTROL OF THE INVESTIGATION, PREPARATION, DEFENSE AND SETTLEMENT OF ANY SUCH INFRINGEMENT CLAIMS AND LICENSOR SHALL MAKE REASONABLE EFFORTS TO PROVIDE COOPERATION AND ASSISTANCE IN ANY SUCH INVESTIGATION, PREPARATION, DEFENSE AND SETTLEMENT. LICENSOR MAY ENGAGE SEPARATE COUNSEL TO MONITOR THE DEFENSE AT LICENSOR'S SOLE COST AND EXPENSE.



ARTICLE 14: INDEMNITY OF LICENSOR

EXCEPT TO THE EXTENT THAT YOU ARE REQUIRED TO INDEMNIFY K5 ERP SOLUTIONS IN ACCORDANCE WITH ARTICLE 13, K5 ERP SOLUTIONS AGREES TO INDEMNIFY YOU, YOUR AFFILIATES, YOUR OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, CONTRACTORS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS FROM AND AGAINST ANY AND ALL CLAIMS, PROCEEDINGS, ACTIONS OR DEMANDS WHICH MAY BE BROUGHT AGAINST YOU OR ANOTHER OF THE INDEMNIFIED PARTIES AND AGREES TO INDEMNIFY AND HOLD YOU AND THE OTHER INDEMNIFIED PARTIES HARMLESS FROM AND AGAINST, ANY AND ALL LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES) REAL OR PERCEIVED, THAT OCCUR, OR THAT YOU MAY SUFFER, SUSTAIN OR INCUR, AS A RESULT OF, OR ARISING OUT OF ANY PROVEN INFRINGEMENT OF ANY SOUTH AFRICAN PATENTS, TRADE-MARKS, TRADE SECRETS, COPYRIGHTS, OR OTHER INTELLECTUAL PROPERTY RIGHTS HELD BY A THIRD PARTY RELATING TO THE SOFTWARE. K5 ERP SOLUTIONS WILL HAVE SOLE CONTROL OF THE INVESTIGATION, PREPARATION, DEFENSE AND SETTLEMENT OF ANY SUCH INFRINGEMENT CLAIMS AND YOU SHALL MAKE REASONABLE EFFORTS TO PROVIDE COOPERATION AND ASSISTANCE IN ANY SUCH INVESTIGATION, PREPARATION, DEFENSE AND SETTLEMENT. YOU MAY ENGAGE SEPARATE COUNSEL TO MONITOR THE DEFENSE AT YOUR SOLE COST AND EXPENSE.

If it is finally held by a court of competent jurisdiction that K5 ERP Solutions must indemnify you pursuant to this Article 14, or if K5 ERP Solutions, in its sole discretion and at any time, determines that the Software infringes a third party right, then K5 ERP Solutions, at no additional cost to the Licensee, will either (a) replace the affected Software with compatible, substantially functionally equivalent and non-infringing Software; (b) modify the Software to avoid the infringement while maintaining functional equivalency; (c) obtain a license to continue use of the affected Software for the Term and pay any additional fee required for such license; or (d) if none of the foregoing alternatives are practical even after K5 ERP Solutions' reasonable commercial efforts, reimburse Licensee to the extent of Licensee's direct damages an amount equal to: (i) the pro-rated portion of the License Fees paid for the infringing Software on a sixty (60) month straight line declining basis in accordance with the following formula: the product of the License Fee and a value the numerator of which is sixty (60) minus the number of months from the Effective Date to the date the infringement is discovered and the denominator of which is sixty (60); plus (ii) any prepaid annual Maintenance Fees for the year in which the infringement is discovered, pro-rated for the number of days Maintenance was provided during such year. Upon payment to the Licensee pursuant to (d) above, Licensee will be released from the obligation to pay further License Fees or Maintenance Fees related to the infringing Software.

ARTICLE 15: TERM AND TERMINATION

- 15.1 This Agreement is effective for the Term. K5 ERP Solutions may terminate this Agreement and the rights granted under it if:
- a) K5 ERP Solutions has not received your order for the Software either directly through one of the order methods offered by K5 ERP Solutions or through a Re-Seller in accordance with this Agreement; or
 - b) K5 ERP Solutions has not been paid in full for the License Fees due under this Agreement within five (5) business days following notice of late payment from Licensor.
- 15.2 If this Agreement is terminated pursuant to Sections 15.1(a) or (b) above, any License Keys sent to you shall automatically become inoperable and the Software will automatically become unusable.
- 15.3 This Agreement shall terminate immediately upon the occurrence of any one or more of the following events: (i) upon the Licensee becoming insolvent, or being adjudged a bankrupt, or making a general assignment for the benefit of its creditors or taking the benefit of any statute relating to insolvency or if a receiver or trustee shall be appointed for all or any portion of its property; or (ii) in the event of any material default or failure by the Licensee or Licensor to observe the provisions of this Agreement, if such default or failure is not fully remedied by the defaulting party within thirty (30) days of the non-defaulting



party providing the defaulting party with a written notice demanding that defaulting party remedy such other default or failure. No refund of the License Fee or pre-paid Maintenance Fees, in whole or in part, will be paid or payable upon termination. Immediately upon termination, you agree to cease all use of the affected Software, delete all License Keys and destroy the Software and all copies thereof, and all other tangible items and materials in your possession, power, or control embodying or pertaining to the Software, including all of its component parts and confirm the same in writing to K5 ERP Solutions. Termination by K5 ERP Solutions pursuant to the foregoing shall terminate all obligations of K5 ERP Solutions to provide Maintenance or any other products or services. Your obligations in Articles 4, 10 and 13, shall survive termination of this Agreement. K5 ERP Solutions' obligations under Articles 4 and 14 shall survive termination of this Agreement.

ARTICLE 16: EXPORT RESTRICTIONS

You acknowledge and agree that the Software is subject to restrictions and controls imposed by South African export and import laws. You agree to comply with all applicable international and national laws that apply to the Software, including South African export regulations, as well as end-user, end-use and destination restrictions issued by South Africa or other governments.

ARTICLE 17: WAIVER

Failure or neglect by either party to enforce at any time any provision of this Agreement will not be deemed a waiver of that or future enforcement of that or any other provision. All waivers must be in writing, and signed by the party waiving its rights.

ARTICLE 18: APPLICABLE LAW

This Agreement shall be subject to, construed by and enforced in accordance with the laws of South Africa and applicable government laws without regard for its conflict of law principles and the parties agree to attorn to the exclusive jurisdiction of the Court of Durban South Africa.

ARTICLE 19: GENERAL PROVISIONS

- 19.1 **Assignment.** Neither party may assign, voluntarily, by operation of law, or otherwise, any rights or delegate any duties under this Agreement (other than the right to receive payments) without the other party's prior written consent, which consent will not be unreasonably withheld, except that K5 ERP Solutions may assign this Agreement, without consent, in connection with a sale of all or substantially all of K5 ERP Solutions' business or assets. This Agreement will inure to the benefit of, and be binding upon the parties hereto, together with their respective legal representatives, successors, and assigns, as permitted herein.
- 19.2 **Compliance with Laws / Foreign Corrupt Practices Act.** You agree at all times to comply with applicable laws and regulations in your performance of this Agreement, including, without limitation, if you are a customer in the United States, the provisions of the United States' Foreign Corrupt Practices Act.
- 19.3 **Force Majeure.** Neither party hereto will be responsible for any failure to perform its obligations under this Agreement if such failure is caused by acts of God, war, strikes, revolutions, lack or failure of transportation facilities, failure of telecommunications suppliers, fire, laws or governmental regulations or other causes which are beyond the reasonable control of such party ("Events of Force Majeure"). Events of Force Majeure shall not include your mere inability to pay Licensor the License Fees or Maintenance Fees. In the event of the happening of such a cause, the party whose performance is so affected will give prompt written notice to the other party, stating the period of time the same is expected to continue.



- 19.4 **Construction/Severability.** Section headings and titles are provided only for convenience and will not be used in interpreting the Agreement. If any provision of this Agreement is prohibited by law or held to be void or unenforceable, the remaining provisions hereof will not be affected, this Agreement will continue in full force and effect as if such void or unenforceable provision had never constituted a part hereof, and the void or unenforceable provision will be automatically amended so as best to accomplish the original objectives of such provision within the limits of applicable law.
- 19.5 **Authorizations.** YOU ACKNOWLEDGE AND AGREE THAT YOUR REPRESENTATIVE RESPONSIBLE FOR ISSUING A PURCHASE ORDER HAS ACTUAL AUTHORITY TO BIND YOU TO THIS AGREEMENT, OR THAT THE SIGNATORY OF THIS AGREEMENT IS DULY AUTHORISED TO DO SO.
- 19.6 **Equitable Remedies.** You acknowledge that a breach of Articles 3, 4 and 10 will cause K5 ERP Solutions irreparable harm from which no adequate remedy exists at law, and for which damages will not be an adequate remedy, and that upon any such breach or threatened breach K5 ERP Solutions shall be entitled to immediate equitable remedies, including injunctive relief on both an interim and permanent basis, without prejudice to any other right in law or equity and without the necessity of prior demand or proof of loss or damage, actual, pending or otherwise.
- 19.7 **Dispute Resolution.** Except for any dispute concerning breach of confidentiality or infringement of any intellectual property right, which dispute will be subject to the exclusive jurisdiction of the Courts of Durban South Africa and the proper appeal courts from such courts, any dispute arising under this Agreement will be subject to binding arbitration by a single arbitrator with the Arbitration Foundation of South Africa (“AFSA”) in accordance with its relevant industry rules, if any. The arbitration will be held in Durban South Africa. Judgment on any award rendered by the arbitrator may be entered in any Court of competent jurisdiction.
- 19.8 **Attorneys' Fees.** If any litigation or arbitration is necessary to enforce the terms of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees and costs.
- 19.9 **Waiver and Modification.** The waiver by any party of any breach of covenant will not be construed to be a waiver of any succeeding breach or any other covenant. All waivers must be in writing, and signed by the party waiving its rights. This Agreement may be modified only by a written instrument executed by authorized representatives of the parties hereto.
- 19.10 **Entire Agreement.** This Agreement and any purchase order related hereto that is expressly agreed to by K5 ERP Solutions, constitutes the complete and exclusive statement of agreement between you and K5 ERP Solutions, and supersedes all prior representations and understandings, oral or written, and all other communications between you and K5 ERP Solutions relating to the subject matter of this Agreement. Both parties acknowledge that they have not been induced to enter into this Agreement by any representations or promises not specifically stated herein.



LICENSEE:

SIGNED at _____ on the _____ day of _____ 2010.

Company: _____

Company Reg. No.: _____

Name: _____

Designation: _____

Sign: _____

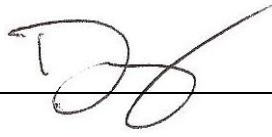
LICENSOR:

SIGNED at Durban on the 7th day of September 2010.

Licensor: K5 ERP Solutions Pty (Ltd)

Name: David Bann

Designation: Director

Sign:  _____