

Licence & Maintenance Agreement

for

[Customer Name]

Prepared for: **Customer Contact**
Contact Position
[Customer Name]

Prepared by: **John O'Brien**
Four Business Solutions Ltd



Licence and Maintenance Agreement

THIS AGREEMENT dated the **1st** day of **January 2000** commencing on the **1st** day of **January 2000** ("the Commencement Date") is made by and between:-

Four Business Solutions

Medius Building

2 Sheraton Street

London W1F 8BH

(Who are referred to in this Agreement as either "we" or "us" or "our")

&

[Customer Name]

[Address]

[Town], [County]

[Postcode]

(Who are referred to in this Agreement as either "you" or "your")

Signed:

Authorised Signatory

Name:

Title:

Date:

For and on behalf of:

Four Business Solutions

Signed:

Authorised Signatory

Name:

Title:

Date:

For and on behalf of:

[Customer Name]

DEFINITIONS

In this Agreement, the following terms shall have the following meanings:

“Designated Equipment”	means the computer hardware listed on which the Software is installed. For the avoidance of doubt, this refers to the server housing the core maintenance application, not web browsers displaying the Software.
“Location”	means the place where the Designated Equipment is installed.
“Parent Company”	means the company having a disposal of majority of voting power in you (the licensee) and or the company executing corporate management over you or further companies.
“Serialisation Code”	means any number, sequence of numbers, computer program or code provided by us to you to be entered into the Software during its execution so as to enable your full and continuing use of the Software.
“Software”	means the computer programs listed in a Schedule 1 attached to this agreement and appropriate User Manual (hard or soft copy) for which you place an order (at the time of execution of this agreement or thereafter). It does not include source code of such programs. It does include new releases, updates and revisions to such computer programs but only as part of the maintenance and support options as set out in section 6.
“Subsidiary Company”	means the company in which the Parent Company has a disposal of majority of voting power and / or over which the Parent Company executes its corporate management.
“User Manual”	means any manual in printed or electronic form designed and intended to assist end Users of Software in use and operation of Software.
“User”	means an individual authorised by you to access a specific module of the Software.

1. The Licence

1.1. We grant you a non-exclusive, non-transferable license to use the Software as set out in this agreement. This licence is perpetual unless the whole of this agreement is terminated.

1.2. You agree to complete one page of Schedule 1 for each site at which the Software is to be installed. Even in the case that we assist you in this, the responsibility for ensuring Schedule 1 is accurate and complete is yours.

1.3. You may use the Software and Serialisation Code only on the Designated Equipment and at the Location designated in Schedule 1 of this agreement, excepting as provided for in the following clause (1.4):

1.4. In the event that the Designated Equipment is damaged, you may use the Software on back up equipment until the Designated Equipment is repaired. We must approve any changes in Location in writing.

1.5. Only you and Users (including Consultants and Sub Contractors authorised by you) have the right to use the Software. You may not make the Software available for use by any third party, may not use the Software to process data of or carry out functions for any third party other than (as may be applicable) your Parent Company or any of your Subsidiary Companies.

1.6. You may not copy Software except to make a reasonable number of backup and archive copies. You may not use a backup or archive copy of Software except as a substitute for the copy you are using. Backup and archive copies must be kept in a place under your control and clearly marked. Backup and archive copies are subject to the same copyright protection as Software.

2. Orders and Payment

2.1. The Client shall pay for the Services together with associated expenses under the terms of this agreement. Expenses include flights and

travel cost, hotel accommodation and subsistence. Where the service is outside the UK the expenses, dependent on location, include visas, inoculations, travel and medical insurance, telephone and communication costs and hotel accommodation and subsistence costs during the weekend. In some locations further expenses will include security, driver and transport provision, evacuation management and emergency evacuation costs if they are incurred.

2.2. The Client acknowledges that times and dates scheduled in the Terms of Reference are estimates only and where payment is agreed on a time and materials basis, the Client will be invoiced for the actual time spent in providing the Services.

2.3. All fees and charges quoted in this Agreement exclude any applicable taxes, which will be chargeable at the then prevailing rate. You will be responsible for the payment of any taxes imposed by any governmental taxing authority on the amounts you are liable to pay to us under this Agreement, including, but not limited to, withholding taxes of whatever nature ("Withholding Taxes"). You may reduce the amount payable to us for consultancy services and training by the amount of such Withholding Taxes. You agree to promptly pay any Withholding Taxes and obtain and deliver to us proof of your payment of such Withholding Taxes together with official evidence thereof issued by the governmental authority concerned, sufficient to enable us to support a claim for a tax refund in respect of any sum so withheld. If we are unable to obtain such tax refund then you agree to pay to us a sum equal to the amount of the tax we are unable to reclaim.

2.4. Cancellation fees will apply, the following rates will be applied against the whole booking: More than 2 weeks (10 working days) – no charge
Between 10 and 6 working days – 50% charged
Between 2 and 5 working days – 75% charged
Between 0 and 2 working days – 100% charged.

2.5. Fees shall be paid in accordance with our invoices, issued in accordance with this agreement.

2.6. Four shall be entitled at any time to vary its charge-out rates but any variation will only be effective once notice is given to the Client.

3. Warranties and limitation of liability

3.1. We warrant that we are authorised by the Author to licence the Software to you.

3.2. For a period of ninety (90) days from the date of your acceptance of the Software to you ("Warranty Period") we warrant that: (a) the Software will function substantially as described in the applicable User Manual when operated on the Designated Equipment running under the operating system(s) specified in Schedule 1; and (b) before our delivering the Software to you, a commercially available virus protection program will be run against it and it will be free from defects in materials and workmanship.

3.3. If, during the warranty, you provide us with evidence that the Software does not function substantially as in the applicable User Manual (Software error) we will, at our option, either refund your money or correct the Software error no later than sixty (60) days after expiration of the warranty period. You must return Software and any copies you have made of it in order to be entitled to a refund.

3.4. Except as specifically provided in sections (3.1) and (3.2) above, we give no warranties and make no representations, whether express or implied, in respect of Software, any User Manual or any service we provide under this agreement and any such warranties and representations are excluded.

3.5. Because the Software is complex and may not be completely protected from errors, you are advised to verify your work and make back-up copies. In no event will we be liable for any incidental, indirect, special or consequential damages including, but not limited to, loss of profits, loss of business, loss of goodwill, loss of data or interruptions of business arising out of or related to this Agreement or the licence or use of the Software or for any claim by any third party.

3.6. Except for damage arising from personal injury or death caused by us, our liability for any loss or damage whatsoever arising from the supply of the Software and/or performance of services under this Agreement in contract, tort (including, but not limited to, negligence or breach of duty imposed by statute)

or any other cause of action will not exceed the purchase price for the licence of the Software plus services or part thereof causing such loss or damage.

4. Licence Compliance

4.1. The following clause (4.2) applies to the Software-sales licence model used by the Software. In the event that you have a different licence model, such as ASP or rental model, clause (4.2) may be crossed out or amended and an appendix or schedule added to the end of this agreement.

4.2. The Software contains a compliance feature which denies access to the Software on a preset date. At least thirty (30) days before the preset date the Software notifies you that you need to obtain a new Serialisation Code in order that you can access the Software after the preset date. To obtain a new Serialisation Code, you need only contact us and so long as you have complied with all parts of section (1), section (2.2), and all parts of section (8) this will be provided.

5. Intellectual property

5.1. This agreement does not entitle you, any User or customer to execute the intellectual and / or industrial property rights related to the Software.

5.2. Our licensors retain ownership of the intellectual property rights in and title to the Software. You acknowledge that Software contains confidential material and agree not to show it or allow it to be shown to any third party in any form without our prior written permission.

5.3. You may not reverse engineer, decompile or disassemble the Software.

5.4. You may not modify, translate or adapt the Software without our prior written approval.

5.5. You may not bypass, delete or misuse any protection method provided for preventing copying or unauthorised use of Software, including but not limited to the Serialisation Code.

5.6. If you are using the current, unaltered release of the Software and have not combined it with a computer program other than one forming part of the Software or a third party's equipment other than the Designated Equipment, we will defend any action brought against you and pay all your reasonable expenses and damages (as the case may be) for any claim that your use of the Software infringes any intellectual property, patent or copyright owned by any third party or constitutes a misappropriation of a trade secret ("Claim"), so long as you notify us promptly of any Claim and you give us sole control of the defence and negotiation of the settlement or compromise of any Claim.

5.7. You agree not to remove or alter any trademark, copyright, confidentiality or other proprietary right notice in the Software or User Manual or affixed to the media or packaging on or in which they are supplied.

6. Software maintenance and support

6.1. We will use our reasonable efforts to rectify any Software error of which you give us written notice and which can be recreated using any unaltered release of the Software first released at any time during the twelve months preceding the date on which you give us such notice. We will have met our obligation under this section if we provide you with any new release, update or revision to the applicable Software that corrects a Software error.

6.2. When notifying us of a Software error you must send us full written details of the problem, together with examples of input and output where appropriate and a written explanation of where you think the Software problem lies.

6.3. If we think it necessary, you must allow our representatives full access to the Software and the Designated Equipment at any time so that we can carry out our obligations under this agreement.

6.4. We may provide you, at your request, an update, revision or new release of Software. We will grant you a non-exclusive, non-transferable licence to such update, revision, or new release subject to the same conditions laid out in this agreement.

6.5. Maintenance and support is ongoing on a yearly basis and continues unless cancelled by either you or us on 30 (thirty) days written notice served before each anniversary of this agreement or terminated in accordance with the provisions of Section (8).

6.6. Charges for maintenance and support for the first year of this agreement are set out in each schedule 1. Maintenance and support for following years will be subject to annual change, and will be communicated in writing by us at least 30 (thirty) days in advance of any such change.

6.7. All maintenance and support charges payable by you must be paid in full in accordance with the terms set out in a schedule 1 subject to our invoice issued in accordance with this agreement.

6.8. In the event that any maintenance and support charge remains unpaid beyond the due date for payment, we become entitled to withdraw the maintenance and support service provided in this section 6.

6.9. You may terminate your right to maintenance and support under this section 6 in accordance with the provisions of section 8. Once you have terminated your right to maintenance and support ceases.

6.10. If your maintenance and support services under this section have been cancelled then you may restart them, provided that you

- a) pay the maintenance and support charges for the period for which you did not have maintenance and support and
- b) upgrade to the latest available version on your platform.

7. Termination

7.1. You may terminate this agreement at any time on 30 (thirty) days' written notice.

7.2. We may terminate the whole of this agreement:

7.2.1. immediately by giving written notice to you in the event you breach any of the provisions of section 1, section 2.2, any of the provisions of section 5 or section 8

7.2.2. 30 days after providing you with written notice of termination in the event of you having failed to rectify a material breach of this agreement, specifying the nature of such material breach (such notice is not required in the case of section 7.2.1 preceding)

7.2.3. immediately in the event of your ceasing to conduct business in the normal course, a receiver, administrator or other similar official is appointed to take control of you or your assets or your becoming insolvent or bankrupt.

7.3. If the whole of this agreement is terminated by you or us pursuant to this section 7 of the agreement you lose your right to use this Software. In such event you agree to return all copies (including archival and backup copies) of Software to us. We may, at our discretion, permit you to destroy all copies of Software and certify to us in writing that this is so.

8. Common provisions

8.1. You agree that you have read the details of this agreement and have understood them. Moreover, you agree that you have not relied on any representation made by us either verbally or in writing. This agreement cannot be modified except when signed by you and us. The preceding provisions represent the entire agreement between you and us on the matters contained in the agreement and the parties attach their authorised signatures hereunder to acknowledge their free will to be obligated by hereinbefore provisions. Under this agreement you are licensing Software. Additionally you are offered maintenance and support subject to the conditions set out in sections 6.

8.2. Assignment: You may not assign this Agreement, in whole or in part, or transfer the Software without our prior written consent. We are an authorised reseller of the Software for [Software Author, Address, Town, County, Postcode Country], (hereinafter "SA"). If our authorised reseller status with SA terminates for any reason, you agree that all rights and obligations arising from this Agreement will (subject to SA's consent) automatically pass to SA and SA will be treated by you and you by SA as if SA entered into it with you and not us as per the date when you will be provided with the written notices from Four, stating that we have ceased to be the provider and that SA wholly substitutes us as a party of this Agreement.

8.3. Export restriction: You agree to comply fully with all relevant export laws of the United Kingdom and the United States of America to ensure that neither the Software nor any direct product thereof is exported, directly or indirectly, in violation of United Kingdom or United States law.

8.4. Law and Jurisdiction: This agreement shall be governed by and construed in accordance with the law of England and you and we submit exclusively to the jurisdiction of the English courts. Notwithstanding, we may undertake action to protect our intellectual property rights in the courts of any jurisdiction that we choose.

8.5. Confidentiality: You and we undertake to keep and treat as confidential and not to disclose to any third party any information relating to the business or trade secrets of the other nor to make use of such information for any purpose whatsoever, except for the purposes of this agreement, with the exception of information which is:

- 8.5.1. In or comes into the public domain other than by breach of this agreement.
- 8.5.2. In either your or our bona fide possession prior to receipt from either us or you.
- 8.5.3. Is received bona fide by either you or us by a third party and not passed either indirectly or directly from either us or you.

Schedule 1 – Licence Details

Software	Modules	No. of Users
Server OS		
Client OS		
Database		
Designated Equipment		
Installation Address		
Invoice Address		
Licence Fee		
Maintenance Fee		
Payment Terms		

Schedule 2 – Variations & Special Terms

Notwithstanding the terms contained with this agreement, the following terms shall apply in relation to the purchase of the Software. In the event of any conflict between the standard clauses of the agreement and this schedule, the terms of this schedule shall take precedence. Four Business Solutions (FBS) confirms that it acts with the authority of the authors in agreeing to these terms.