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## SOFTWARE END USER LICENSE AGREEMENT (EULA)

### **LICENSE FEES INCLUDE:**

- Technical support via telephone/e-mail/VPN/Team Viewer (Mon – Fri 8.30 am – 5.00 pm)
- System management and updating via VPN subject to infrastructure.
- System enhancements within the framework of the functional specification

### **SERVICE LEVEL AGREEMENT**

#### Support Structure & Procedures

- 3 front-line support staff, managed by David Lawrence Brown, Business Manager KE
- All support calls logged through Cellsoft call logging system, with each support issue 'owned' by a support member. All staff follow strict methodology, which includes the following procedure and the capture of the following data:
  - Username
  - Software Application
  - Application version no.
  - Call category (software/hardware, technical/advice)
  - Application area
  - Error message(s)
  - Steps before and after error message
  - Cross reference Error Message to previous logged calls to identify if known/previous issue, and issue immediate error-fix release
  - Confirm error-fix successful
  - Call closed

If error fix fails, or if the error is unknown, then

- Call Escalation to programmer with all relevant error details
- Programmer responds with error-fix release to Support
- Support communicates error-fix release with the user
- Confirm error-fix successful
- Call closed

For Cellsoft Software Limited's Standard Service Level Agreement, please refer to Appendix B.

1. All end user licence agreement or agreements are entered into by and between the individual or entity identified in the online registration process pursuant to which:
  - a. Cellsoft Technologies' software and services are made available (User) and Cellsoft Technologies, is registered in Kenya with company number A000241414P whose registered office is at 214 Kilimani Road, Nairobi Kenyan (Cellsoft).
2. This Agreement sets out the terms and conditions that govern the User's access to and use of this website and the software and services available through it (Site), and represents the entire agreement between the parties concerning the same.
3. By clicking "I Agree" in the registration process (or if there is no registration process by accessing this Site), the User agrees the terms of this Agreement.
4. For parts of this Site which require registration the User obtains access to and use of the Site as an authorised user nominated by a primary user which has a contractual arrangement with Cellsoft Technologies for the provision of certain services, including access to and use of the Site for users nominated by it (Primary User) (Primary User Contract).
5. This Agreement incorporates Cellsoft Technologies Privacy Policy [<http://www.cellsofttechnologies.com/privacy-policy>], and other rules, criteria, policies, or procedures that Cellsoft may adopt and notify to the User from time to time, any of which Cellsoft may amend or modify from time to time in its sole discretion. If Cellsoft amends this Agreement a User may be required to review and accept the amended Agreement before it will be permitted to access or use the Site.

### **DEFINITIONS**

# CELLSOFT TECHNOLOGIES EULA 2023

## 1. The definitions and rules of interpretation in this paragraph 1 apply in this Agreement:

**Confidential Information:** all identifiable methodology, know-how, experience, data, databases, flow charts, reports, tables or other material produced in relation to this Agreement and any other information of whatever kind (whether commercial, technical, financial, operational or otherwise, whether communicated verbally, in writing or in any other form and whether or not expressly stated to be confidential) relating to a party including its business, products, suppliers and customers and, unless the context otherwise requires, the expression Confidential Information shall also include any modification (whether authorised or otherwise) made to any of the above-mentioned information by the party receiving it or any person to whom it has disclosed that information.

**Content:** all registered and unregistered trademarks, service marks, logos, icons, characters, artwork, images, pictures, videos, audio clips, graphics, diagrams, music, sound, information, text, data, analyses, reports, comments, e-mail addresses, names, addresses, and similar material and content.

**Cellsoft Technologies Authorised Parties:** Cellsoft affiliates, directors, officers, employees, members, agents, contractors, representatives, and other service providers.

**Site Content:** all Content uploaded to or otherwise made available on or generated from the Site by Cellsoft; all software used in connection with the Site; all Site user details (including subscriber, registration, and/or mailing lists), postings, submissions, Site user profiles, anonymous and/or aggregate Site user data, and any other information generated by visits to the Site as may be compiled by Cellsoft; the selection, layout, and format of the Site itself; and all enhancements or modifications to any and all intellectual property rights in all of the foregoing.

**Term:** the period from the date on which the User completes the relevant registration form and clicks "I Agree" until the date on which this Agreement expires or is terminated in accordance with its terms.

**User Content:** all Content uploaded to or otherwise made available on or generated from the Site by the User including any personal data, and the results of and supporting data for assessments, action plans, and responses.

**Virus:** anything or device (including any software, code, file or program) which may: (a) prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network, or any other service or device; (b) prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the program or data in whole or part or otherwise); or (c) adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

1. Where the context requires any reference to the singular shall include the plural and vice versa.
2. Any phrase introduced by the terms include, including, particularly or in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the preceding words.
3. Any reference to written or in writing includes e-mails (but not fax or other transitory forms).
4. References to times of the day are to London time and references to a day are to a period of 24 hours commencing at midnight at the start of the day.

## 2. GRANT OF LICENCE

5. Cellsoft hereby grants to the User a non-exclusive, limited, revocable, non-transferable licence, during the Term, to: (i) access and use the Site, in accordance with this Agreement and all applicable laws, regulations, and directives; and (ii) submit, post, and display User Content on and to the Site ("the Licence").

## 3. TERM, TERMINATION AND SUSPENSION

6. This Agreement shall be effective for the Term.

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7. This Agreement and the Licence shall terminate automatically upon the earlier of: (a) termination or expiry of the Primary User Contract; and (b) termination of the User's account as a result of a breach of this Agreement.
8. Cellsoft may terminate this Agreement immediately by written notice to the User if: (a) the User commits a breach of this Agreement which it fails to remedy (if remediable) within 5 (five) days after the service of written notice requiring it to do so; or (b) the User breaches any of the provisions of clause 5, 6, 7 and 9 below.
9. On termination for any reason: (a) all rights granted to the User under this Agreement including the Licence shall cease; (b) the User must immediately cease all activities authorised by this Agreement, including any access to or use of the Site; and (c) the User must destroy all Site Content then in its possession, custody or control and certify to Cellsoft that it has done so. The accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination (including paragraphs 7, 8, 9 and 11), shall not be affected or prejudiced.
10. Cellsoft may suspend any or all of the Site (or the User's access to and use of it) without liability in any circumstances where it is entitled to do so under the General Terms & Conditions or the Primary User Contract which ever has been issued.

### 4. FEES AND EXPENSES

11. All expenses incurred by the User in connection with its access to and use of the Site and the installation, implementation, termination, and/or receipt of services provided through the Site shall be the User's sole responsibility.

### 5. USER CONTENT

12. The Site may provide an opportunity for the User to submit and post User Content. The User shall use reasonable efforts to ensure that all User Content is accurate, complete and up to date to the best of the User's knowledge, and to update User Content from time to time as necessary to ensure it remains accurate, complete and up to date. The User represents and warrants to Cellsoft that it owns or has a valid licence to submit and post User Content to the Site and has the power and authority to grant to Cellsoft and third parties the rights granted in this Agreement. Cellsoft reserves the right, in its discretion, to review, edit, and/or delete any User Content which, acting reasonably, it believes breaches this Agreement.
13. The User shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Site that:
  - a. is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
  - b. facilitates illegal activity;
  - c. depicts sexually explicit images;
  - d. promotes unlawful violence;
  - e. is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activity; or
  - f. causes damage or injury to any person or property; and Cellsoft reserves the right, without liability to the User, to disable the User's access to any material that breaches the provisions of this paragraph 5.2.

### 6. SITE AND SITE CONTENT

14. Cellsoft owns, or uses with permission, the Site, and the Site Content.
15. The User shall not (except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this Agreement):
  - a. copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Site or the Site Content in any form or media or by any means;
  - b. reverse compile, disassemble, reverse engineer, or otherwise reduce to human-perceivable form all or any part of the Site or the Site Content;
  - c. access all or any part of the Site or the Site Content to build a product or service which competes with the Site;
  - d. use the Site or the Site Content to provide services to third parties;

## CELLSOFT TECHNOLOGIES EULA 2023

- e. subject to paragraph 16, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Site or the Site Content available to any third party;
- f. use any intellectual property rights of Cellsoft or its affiliates without the express prior written consent of Cellsoft; or
- g. attempt to do or facilitate the doing by any third party of any of the things referred to in this paragraph 6.2.

16. The User shall use commercially reasonable endeavours to prevent any unauthorised access to, or use of, the Site or the Site Content and, in the event of any such unauthorised access or use, promptly notify Cellsoft. To the extent permissible by law, Cellsoft will not be liable for any loss that the User or any third party may incur as a result of any use or misuse of any username or password or unauthorised use of any part of the Site or the Site Content, whether with or without the User's knowledge.

### 7. NO OTHER TRANSFER OF RIGHTS

- 17. The User acknowledges and agrees that Cellsoft and/or its licensors own all intellectual property rights in the Site including for clarity any changes to the Site made in the course of this Agreement.
- 18. Nothing in this Agreement effects a transfer of any copyright, trademark, or other intellectual property or proprietary rights: (a) from Cellsoft to the User; (b) from the User to Cellsoft; (c) from the User to any other user of the Site; or (d) from any other user of the Site to the User, other than as expressly set out in this Agreement. Neither party shall remove or alter any copyright, trademark, nor other notices of the other party displayed on any content owned by the other party or any other user of the Site.

### 8. INDEMNIFICATION

- 19. The User hereby indemnifies and shall keep indemnified, and shall defend and hold harmless Cellsoft and the Cellsoft Authorised Parties from and against any and all claims, damages, liabilities, actions, judgments, costs and expenses, including reasonable legal and other professional fees arising out of or relating to: (a) any User Content submitted or posted by the User and (b) any unauthorised use of the Site by the User.

### 9. CONFIDENTIALITY

- 20. Except as permitted under this Agreement or as otherwise required by law, neither party shall use, disclose to any third party or otherwise make publicly available any of the other party's Confidential Information, in any form or media. Cellsoft' Confidential Information includes all data, information, software, and materials pertaining to this Site.
- 21. Notwithstanding paragraph 9.1, nothing in this Agreement shall prevent the party receiving the other party's Confidential Information (Receiving Party) from disclosing the Confidential Information of the disclosing party (Disclosing Party) upon the Receiving Party establishing that the Disclosing Party's Confidential Information: (a) has become part of the public domain other than by acts or omissions of the Receiving Party, its employees, agents or contractors; (b) was lawfully in the possession of the Receiving Party at the time of disclosure to it and was not acquired by it directly or indirectly from the Disclosing Party; (c) was received by Receiving Party after disclosure to it by a third party who had a lawful right to disclose such information to it; (d) was independently developed by the Receiving Party without knowledge or use of the Disclosing Party's Confidential Information; or (e) is required to be disclosed by law or in response to the binding order or direction of a court or other duly authorised regulatory body, or to investigate or take action in response to violations or suspected violations of this Agreement.
- 22. In the event of the unauthorised disclosure of one party's Confidential Information by the other party, the party whose Confidential Information has been disclosed shall be entitled to seek injunctive relief and other equitable remedies for a breach, in addition to any other rights or remedies to which it may be entitled.

# CELLSOFT TECHNOLOGIES EULA 2023

## 10. WARRANTIES

23. Cellsoft does not represent or warrant to the User that the Site, any Site Content or services made available through the Site will be accurate, complete, reliable, error-free, or always available, or that the Site or the servers, hardware or software used in connection with the site are free of viruses, malware or other harmful components. Certain Site Content, including User Content, is owned, and supplied by parties other than Cellsoft, and Cellsoft has not independently verified the completeness, accuracy, or reliability of any such content. The Site, Site Content, and other services and features made available through the Site are delivered "as is" without warranties of any kind to the User, whether express or implied, including any warranties of merchantability, fitness for a particular purpose, title, or infringement.

## 11. LIABILITY

- a. In no event shall Cellsoft or the Cellsoft Authorised Parties be liable to the User for any losses, damages or expenses whether direct or indirect, including lost data, lost profits, business interruption, time, money, goodwill, or any special, indirect, incidental or consequential damages, whether in contract, tort (including negligence) or otherwise, arising out of or in connection with the use of or inability to use the Site and/or the Site Content, even if Cellsoft had been advised of the possibility of such loss or damages. The User's sole and exclusive remedy in respect of any breach of this Agreement by Cellsoft shall be to terminate this Agreement.
- b. Nothing in this Agreement excludes or limits the liability of Cellsoft: (a) for death or personal injury caused by Cellsoft' negligence; (b) for fraud or fraudulent misrepresentation; or (c) for any other liability which may not lawfully be excluded or limited.
- c. The User acknowledges that: (a) Cellsoft has a direct contractual relationship with the Primary User through the Primary User Contract; (b) the Primary User has suitable remedies if Cellsoft is in breach of the Primary User Contract and the User suffer any loss as a result of such breach; and (c) the limitations and exclusions of liability set out in this Agreement reflect that Cellsoft and the Primary User intend that Cellsoft' contractual responsibilities and liabilities should be to the Primary User and not to the User.
- d. Cellsoft shall have no liability for:
- i. any damage caused by errors or omissions in any information, instructions or scripts provided to Cellsoft by the User or Primary User in connection with the Site, or any actions taken by Cellsoft at the User's or Primary User's direction;
  - ii. errors in any data or services supplied to Cellsoft by third parties (including but not limited to any data supplied by governmental or regulatory bodies) and incorporated into or used by Cellsoft in the Site or related service offered by Cellsoft.

## 12. REFERENCES TO THIRD PARTIES

- e. The use of or reference to the names or trademarks of any third parties or any references to their products or services on the Site does not constitute an endorsement by Cellsoft of such parties or their products or services. Cellsoft shall not be responsible for the content of any third-party websites linked to the Site, and the User's use of any linked website is subject to the terms and conditions of use and privacy policy imposed by the operator of the linked website.

## 13. WAIVER

- f. A waiver of any right under this Agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.
- g. Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.

## 14. SEVERANCE

- h. If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable, or illegal, the other provisions shall remain in force.

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- i. If any invalid, unenforceable or illegal provision would be valid, enforceable, or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

### 15. ENTIRE AGREEMENT

- j. This Agreement, and any documents referred to in it including the Primary User Contract, constitutes the whole agreement between the parties and supersedes any previous arrangement, understanding or agreement between them relating to the subject matter it covers.
- k. Each of the parties acknowledges and agrees that in entering into this Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this Agreement or not) relating to the subject matter of this Agreement, other than as expressly set out in this Agreement.

### 16. ASSIGNMENT, ETC.

- l. The User shall not, without the prior written consent of Cellsoft, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.
- m. Cellsoft may at any time assign, transfer, or sub-contract all or any of its rights or obligations under this Agreement provided that the party to which Cellsoft assigns, transfers, or sub-contracts provides a written undertaking to the Primary User to continue to be bound by all the terms of this Agreement.

### 17. NO PARTNERSHIP OR AGENCY

- n. Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability, or the exercise of any right or power).

### 18. THIRD PARTY RIGHTS

- o. This Agreement does not confer any rights on any person or party (other than the parties to this Agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

### 19. GOVERNING LAW AND JURISDICTION

- p. This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non- contractual disputes or claims) is governed by, and shall be construed in accordance with, the law of England.
- q. The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

Name: \_\_\_\_\_ Designation: \_\_\_\_\_  
Sign: \_\_\_\_\_ Date: \_\_\_\_\_