

**VERTICALAPPS**

**SOFTWARE**

**LICENSE**

**AND**

**MAINTENANCE**

**AGREEMENT**

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## **1. Introduction**

This Software License Agreement ("Agreement") is made and effective by and between VerticalApps ("Developer") and \_\_\_\_\_ ("Licensee").

Developer has developed and licenses to users its software program marketed under the name TraumaBank (the "Software").

Licensee desires to utilize a copy of the Software.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, Developer and Licensee agree as follows:

## **2. License.**

Developer hereby grants to Licensee a perpetual, non-exclusive, limited license to use the Software as set forth in this Agreement.

## **3. Restrictions.**

Licensee shall not modify, copy, duplicate, reproduce, license or sublicense the Software, or transfer or convey the Software or any right in the Software to anyone else without the prior written consent of Developer. The Licensee may make copies of the Software for backup or archival purposes only.

## **4. Fee.**

In consideration for the grant of the license and the use of the Software, Licensee agrees to pay Developer the sum of \_\_\_\_\_ Per Month for an initial period of (12) twelve Months, automatically renewable after this period. Should the Licensee wish to cancel this agreement after any (12) twelve month period, the Licensee shall give the Developer (30) thirty days written notice of intention to cancel.

## **5. Payment.**

Payment of any amount owed by Licensee to Developer pursuant to this Agreement shall be paid within thirty (30) days following invoice from Developer. The "Software" has been developed to expire on a monthly basis. The Developer agrees to provide the Licensee with Software access codes while all amounts owed are paid. In the event any overdue amount owed by Licensee is not paid following ten (10) days written notice from Developer, the Developer retains the right to withhold access codes until all overdue amounts have been paid.

## **6. Warranty of Title.**

Developer hereby represents and warrants to Licensee that Developer is the owner of the Software or otherwise has the right to grant to Licensee the rights set forth in this Agreement. In the event of any breach or threatened breach of the foregoing representation and warranty, Licensee's sole remedy shall be to require Developer or to either: i) procure, at Developer's expense, the right to use the Software, ii) replace the Software or any part thereof that is in breach and replace it with Software of comparable functionality that does not cause any breach, or iii) refund to Licensee the full amount of the license fee upon the return of the Software and all copies thereof to Developer.

## **7. Warranty of Functionality.**

The Developer warrants that the Software shall perform in all material respects according to the Developer's specifications concerning the Software when used with the appropriate computer equipment and using competent data entry personnel. In the event of any breach or alleged breach of this warranty, Licensee shall promptly notify Developer who will correct the Software. Licensee's sole remedy shall be that Developer shall correct the Software so that it operates according to the warranty. This warranty shall not apply to the Software if modified by anyone or if used improperly or on an operating environment not approved by Developer. By acceptance of this contract the Licensee agrees that the features of the Software fulfill his or her requirements.

## **8. Software Maintenance.**

In return for the Fee agreed in section 3 above, Developer shall provide the following to Licensee:

- Any new, corrected or enhanced version of the Software as created by Developer. Such enhancement shall include all modifications to the Software which increase the speed, efficiency or ease of use of the Software, or add additional capabilities or functionality to the Software, and shall include any substantially new or rewritten version of the Software.
- Telephonic support regarding the usage or any problems relating to the Software.
- An automated backup system backing up the Software to a backup folder on the same PC or another PC on the computer network. The Licensee may Email this backup folder to the Developer who will keep a copy of the Licensee's data offsite. Although the Developer will put all reasonable measures in place to prevent the Licensee from losing data, the Developer does not take responsibility for the Licensee's backups. The Licensee is ultimately responsible for backups of the "Software".
- If required and subject to the satisfactory installation and maintenance by the Licensee of the necessary remote access software, the Developer will provide remote diagnosis of the Licensee's system to assist the Licensee with correction of

any problems experienced. This service can be provided via an Internet connection using Ultra VNC or via a Direct Connection between Developer and Licensee's computer. If the Direct Connection method is used, the Licensee's system will be set in a Dial Back mode. All costs associated with the maintenance of the Direct Connection and the cost of the telephone calls associated with the connection will be at the Licensee's expense.

- Should the Licensee not provide the Developer with a satisfactory remote access system and therefore require on-site support, the cost of the on-site support will be at the expense of the Licensee as set out in the Pricing Schedule.
- Any additions to the Software not set out in the Developers Specifications and requested by the Licensee shall be at the expense of the Licensee as set out in the Pricing Schedule.

**9. Warranty Disclaimer.**

DEVELOPER'S WARRANTIES SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

**10. Limitation of Liability.**

Developer shall not be responsible for, and shall not pay, any amount of incidental, consequential or other indirect damages, whether based on lost revenue or otherwise, regardless of whether Developer was advised of the possibility of such losses in advance. In no event shall Developer's liability hereunder exceed the amount of license fees paid by Licensee, regardless of whether Licensee's claim is based on contract, tort, strict liability, product liability or otherwise.

**11. Notice.**

Any notice required by this Agreement or given in connection with it, shall be in writing and shall be given to the appropriate party by personal delivery or by certified mail, postage prepaid, or recognized overnight delivery services.

If to Developer:

Stefano Mestriner  
VerticalApps  
P.O.Box 40428  
Cleveland  
2022  
South Africa

If to Licensee:

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**12. No Assignment.**

Neither this Agreement nor any interest in this Agreement may be assigned by Licensee without the prior express written approval of Developer.

**13. Final Agreement.**

This Agreement terminates and supersedes all prior understandings or agreements on the subject matter hereof. This Agreement may be modified only by a further writing that is duly executed by both parties.

**14. Severability.**

If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this Agreement, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.

**15. Headings.**

Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent.

The Licensee and Developer by their signatures hereto acknowledge that they have read, understood and agree to be bound by the terms and conditions of this Agreement. This Agreement means the agreement as set out in this document, together with all annexures attached hereto ("**Agreement**").

Signed at ..... on this .....day of ..... 20 .....

	Accepted for Developer	Accepted for Licensee
<b>By:</b>		
<b>Name:</b>		
<b>Title:</b>		

	Witness 1	Witness 2
<b>Signature:</b>		
<b>Name:</b>		
<b>Title:</b>		

**Commencement Date:** \_\_\_\_\_

This Agreement will continue in effect until terminated in accordance with the terms of this Agreement, irrespective of the date of signature.

**Appendix A****PRICING SCHEDULE****HOURLY RATES**

Normal Rates Apply:

08h00 to 17h00 Weekdays

Overtime Rates Apply

17h00 to 08h00 Weekends and Public Holidays

<b>RATES</b>	<b>PROGRAM OPERATIONS CONSULTANT</b> Per Hour Basis	<b>SOFTWARE DEVELOPER</b> Per Hour Basis
Travelling Rates	R 220.00	R 220.00
Normal Rates	R 200.00	R 300.00
Overtime Rates	R 260.00	R 380.00

**ALLOWANCES**

<b>ITEM</b>	<b>CHARGE UNITS</b>	<b>RATE</b>
Flights	Per Flight	Billed to client at cost
Accomodation	Per Night	R 440.00
Breakfast	Per Meal	R 40.00
Lunch	Per Meal	R 60.00
Supper	Per Meal	R 80.00