



## Source Code Licensing and Confidentiality Agreement

### SOURCE CODE LICENSING AND CONFIDENTIALITY AGREEMENT

This Source Code License and Confidentiality Agreement ("Agreement") is made (on the date of download or other access) by and between ("Licensee") and Plucom Technology.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

#### 1. DEFINITIONS.

1.1. "Source Code" shall mean (i) all source code provided or made available to Licensee pursuant to this Agreement and pursuant to Licensee purchasing prior valid Plucom Technology license(s) and prior agreement to the Plucom Technology End User License Agreement ("EULA") when order is placed, and (ii) such source code's structure and organization, and (iii) all related documentation, developer's notes and database schema, if any, provided or made available to Licensee pursuant to this Agreement, and (iv) any copies (both electronic and paper) made thereof by or on behalf of Licensee.

1.2. "Compiled Application" means the executable program run from unmodified Source Code.

#### 2. LICENSEE RIGHTS AND RESTRICTIONS.

##### 2.1. Grant of License.

2.1.1. Subject to Licensee's strict compliance with the terms and conditions of this Agreement, Plucom Technology hereby grants to Licensee (i) a non-exclusive, non-transferable, limited license under Plucom Technology copyrights in the Source Code to internally reproduce the Source Code and create derivative works based upon the Source Code for the sole purposes of providing maintenance support or developing new functionalities, features, procedures, routines, or customizations that are not available in the Compiled Application ("Enhancements"), (ii) a non-exclusive, non-transferable, limited license to use the Enhancement for internal purposes in connection with Licensee's use of the Plucom Technology Software ("Software"), and (iii) a non-exclusive, non-transferable, limited license to sublicense the use of the Enhancement to Licensee's clients who are also properly licensed to use the Plucom Technology Software ("Permitted Clients").

2.1.2. Licensee understands and acknowledges that Plucom Technology may develop and/or market for itself the same or similar Enhancements, and may grant a third person or entity the right to develop and/or market the same or similar Enhancements, and that Plucom Technology has made no promises to the contrary.

## 2.2. Restrictions and Requirements of Use.

2.2.1. Except as expressly provided in Section 2.1, no other license or right in the Source Code is granted to Licensee under this Agreement directly or by implication or otherwise. Without limiting the generality of the foregoing and notwithstanding anything to the contrary in this Agreement, Licensee may not:

2.2.1.1. Remove any copyright notice, proprietary information notices, or other notice (collectively, "Copyright Notice") provided by Plucom Technology, including, without limitation, any Copyright Notice contained in the Source Code provided by Plucom Technology;

2.2.1.2. Assign, sublicense, lease, or in any other way transfer or disclose the Source Code to any third party, including, without limitation, (i) to any Permitted Clients, (ii) to independent contractors or developers (Third Parties), or (iii) as part of the Enhancements, unless specifically authorized in writing, by having each Third Party execute the Subcontractor Addendum to this agreement.

2.2.1.3. Utilize the Source Code in a manner to prepare, draft, or assist third parties in preparing or drafting software that is similar to the Software subject to this License that is intended for sale, license, or distribution to others (whether that distribution be for profit or free) in a manner that would compete directly or indirectly with Plucom Technology's products; or

2.2.1.4. Reproduce or use any part of the Source Code, Compiled Application, or use the Software except as provided in this Agreement; or

2.2.1.5. Reproduce, modify, decompile, reverse engineer, disassemble, or otherwise reduce the Software to a human-readable form.

2.2.2. The restrictions set forth in Section 2.2.1 shall apply equally to attempts to perform the restricted activities, regardless of whether or not any such attempt is successful.

## 2.3. Confidentiality.

2.3.1. Licensee agrees and acknowledges that the Source Code is: (i) proprietary to Plucom Technology; (ii) is of significant value to Plucom Technology; (iii) is not publicly available; (iv) contains trade secrets of Plucom Technology; and (v) constitutes the confidential information of Plucom Technology. Licensee shall comply with the following restrictions on use of the Source Code and shall maintain the Source Code in accordance with the following security procedures:

2.3.1.1. Licensee shall use commercially reasonable measures to preserve the security and confidentiality of the Source Code, including, without limitation, securing the network, server, hard drives, and other media on which the Source Code is stored or maintained.

2.3.1.2. Licensee shall limit access to the Source Code to its employees who have a need to access the Source Code for the purposes of exercising Licensee's rights under this Agreement (each, an "Authorized Person") and to its independent contractors (and developers (Third Parties), if any, who are approved by Plucom Technology pursuant to Section 2.2.1.2 (each, an "Authorized Independent Contractor"). Without limiting the foregoing, no Authorized Person or Authorized Independent Contractor may have access to the Source Code unless and until: (i) he or she has been apprised of and acknowledges the confidential and proprietary nature of the Source Code; (ii) has been trained with respect to the procedures designed to preserve its confidentiality; (iii) and is subject to a binding and enforceable obligation neither to use the Source Code (other than for purposes expressly permitted by this

Agreement) nor to disclose such Source Code to any person or entity other than a person similarly authorized to access the Source Code.

2.3.1.3. Licensee shall conduct periodic reviews to ensure compliance with the foregoing security requirements. Plucom Technology shall have the right to conduct a review of Licensee on Licensee's premises to ensure compliance with the foregoing security restrictions, including an inspection the records and agreement maintained by Licensee pursuant to subsection 2.3.1.3 above, provided that Plucom Technology provides at least three (3) business days prior written notice.

2.3.2. Licensee shall be jointly and severally responsible for any violation of any of the confidentiality obligations set forth in this Agreement by any of its employees, contractors and third parties acting on its behalf.

2.4. Injunctive Relief. Licensee acknowledges and agrees that Plucom Technology will suffer irreparable damage in the event of a breach by Licensee of the terms of Sections 2.3 or 2.4 of this Agreement and that Plucom Technology will be entitled to injunctive relief (without the necessity of posting a bond or proving actual damages) in the event of any such breach.

2.5. Indemnification. Licensee hereby agrees to indemnify, defend and hold harmless Plucom Technology and its directors, officers, shareholders, partners, affiliates, employees, representatives and agents from and against any loss, fines, fees, settlements, judgments, costs, expenses (including, without limitation, reasonable attorneys' fees, court costs, and administrative fees), and any other liability arising out of or related to any claim, demand, or cause of action asserted by any third party arising out of or related to Licensee's use of the Enhancements.

### **3. LICENSE FEES**

3.1. License Fees. Licensee will pay to Plucom Technology the license fee(s) for source as follows [per]: (a) The amount paid when Licensee placed their "with source" or "add source" order on the Plucom Technology website, or (b) in the times and amounts set forth in Exhibit A ("License Fees") by prior special agreement with Plucom Technology.

### **4. INTELLECTUAL PROPERTY.**

4.1. Existing Intellectual Property. As between the parties, Plucom Technology is and shall be the exclusive owner of all right, title and interest in and to (i) the Software and the Source Code, and (ii) all patent, copyright, trademark, trade secret, and any and all other protectable intellectual property and proprietary rights both now and in the future, whether or not registered or perfected (but to the extent existing, all registrations, applications, renewals, extensions, continuations, divisions or reissues hereof now or hereafter in force), and whether arising by operation of law, contract, or otherwise (collectively, "Intellectual Property Rights") in and to the foregoing (the "Existing Intellectual Property"). The Software and Source Code are protected by copyright and other applicable laws, including without limitation by Nigeria Copyright Law, international treaty provisions and applicable laws in the country in which it is being used. Licensee may not copy or use the Software or Source Code except as permitted herein. Licensee agrees not to modify, adapt or translate the Software or Source Code except as permitted herein. Any information or documentation supplied by Plucom Technology or otherwise obtained by Licensee in connection with or as a result of this Agreement may only be used by Licensee for the purpose described herein and may not be disclosed to any third party (except as permitted herein) or

used to create any software which is substantially similar to the Software.

4.2. New Intellectual Property. As between the Parties, any right, title and interest to any Enhancements, updates, and modifications shall be owned by the Party who created them; with respect to Enhancements, updates, and modifications, that are jointly created, they shall be owned by Plucom Technology and Licensee shall be granted a license to use those jointly created Enhancements, updates, and modifications in accordance with this Agreement and the prior agreed EULA. In no event shall any rights in the Plucom Technology Source Code vest or otherwise transfer to Licensee and Licensee acknowledges that any ownership of Enhancements, updates, and modifications shall be limited to the Enhancements, updates, and modifications and not the underlying Plucom Technology Source Code.

## **5. WARRANTY, WARRANTY DISCLAIMER, AND LIMITATION OF LIABILITY.**

5.1. Mutual Representations. Each party represents and warrants (i) that such party is duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation; (ii) that such party has the legal right and authority to enter into and perform its obligations under this Agreement; (iii) that, to the best of its knowledge, the execution and performance of this Agreement will not conflict with or violate any provision of any law having applicability to such party; and (iv) that this Agreement, when executed and delivered, will constitute a valid and binding obligation of such party and will be enforceable against such party in accordance with its terms.

5.2. Warranty Disclaimer. Except as specifically set forth in Section 5.1 above, no further warranty of any kind is being provided by Plucom Technology, including, without limitation, any warranty that the Software and Source Code shall be free from defects in design, material or workmanship. LICENSEE ASSUMES TOTAL RESPONSIBILITY FOR THE USE OF THE SOFTWARE AND SOURCE CODE, AND THE SOFTWARE AND SOURCE CODE ARE PROVIDED ON AN "AS-IS" BASIS. TO THE MAXIMUM EXTENT PERMITTED BY LAW AND EXCEPT AS SPECIFICALLY SET FORTH IN SECTION 5.1, THE SOFTWARE AND SOURCE CODE ARE PROVIDED WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, AND WHETHER ARISING UNDER LAW OR FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE (COLLECTIVELY, "DISCLAIMED WARRANTIES"), INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ALL SUCH WARRANTIES ARE HEREBY EXPRESSLY EXCLUDED BY PLUCOM TECHNOLOGY AND FOREVER WAIVED BY LICENSEE. NO ADVICE OR INFORMATION GIVEN BY PLUCOM TECHNOLOGY, ITS AFFILIATES OR ITS CONTRACTORS OR THEIR RESPECTIVE EMPLOYEES SHALL CREATE A WARRANTY OR OBLIGATION OF PLUCOM TECHNOLOGY. In the event that any of the Disclaimed Warranties cannot be disclaimed or waived under applicable law, Licensee's sole and exclusive remedy for breach of such Disclaimed Warranty will be, at Plucom Technology's sole discretion, either (i) the replacement of the Source Code, at no additional cost to Licensee, or (ii) the refund of any License Fees actually paid by Licensee under this Agreement.

5.3. Limitation of Liability. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, PLUCOM TECHNOLOGY SHALL NOT BE LIABLE TO LICENSEE, AND LICENSEE COVENANTS THAT IT WILL NOT ASSERT A CLAIM AGAINST PLUCOM TECHNOLOGY, UNDER ANY LEGAL THEORY, WHETHER IN AN ACTION BASED ON A CONTRACT, NEGLIGENCE, TORT, STRICT LIABILITY, OR OTHERWISE PROVIDED BY STATUTE OR LAW, (i) FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY, CONSEQUENTIAL, OR STATUTORY DAMAGES, OR ANY DAMAGES RESULTING FROM LOST PROFITS, INTERRUPTION OF BUSINESS, OR LOSS OF GOODWILL, EVEN IF PLUCOM TECHNOLOGY HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR (ii) FOR DAMAGES RELATED TO OR ARISING OUT OF THIS AGREEMENT IN AN AMOUNT THAT EXCEEDS THE LICENSE FEES ACTUALLY PAID BY LICENSEE UNDER THIS AGREEMENT. LICENSEE HEREBY WAIVES ANY

CLAIM THAT THESE EXCLUSIONS DEPRIVE IT OF AN ADEQUATE REMEDY OR CAUSE THIS AGREEMENT TO FAIL OF ITS ESSENTIAL PURPOSE.

5.4. Basis of Bargain. The parties hereby acknowledge and agree that the warranty disclaimers and limitation of liability provisions set forth above have been negotiated and are fundamental elements of the basis of this Agreement, and Plucom Technology would not be able to provide the licenses granted herein at the price and on the other terms and conditions currently offered without such limitations. The parties further agree that such provisions will inure to the benefit of the other party's successors and permitted assigns.

## **6. TERM AND TERMINATION.**

6.1. Term. The term of this Agreement and the licenses granted herein shall begin on the effective date of this Agreement and shall continue as long as Licensee is using Plucom Technology software or until the earlier termination of this Agreement pursuant to the provisions set forth herein.

6.2. Event of Default. Each of the following shall constitute an event of default ("Event of Default") under this Agreement: (a) Licensee fails to pay any amount due under this Agreement within thirty (30) days of the date such amount is due; (b) an uncured material breach by either party of this Agreement, provided that the non-breaching party has notified the breaching party of the Event of Default and afforded the breaching party at least thirty (30) days to cure such breach; and (c) Licensee is acquired by or merges with, or begins discussions to become acquired by or merged with, a competitor to Plucom Technology. A competitor is defined as any company selling products defined in the e-commerce space, or "shopping cart" space to customers, as standalone products, or as integrated offering with a service or other product.

6.3. Termination upon Event of Default. If an Event of Default occurs, the non-breaching party (or Plucom Technology in the event of an Event of Default pursuant to Sections 6.2(a) or (c)) may, in its sole discretion, terminate this Agreement. In such event, the non-terminating party shall pay to the terminating party all costs and expenses (including reasonable legal fees and costs and fees of collection agencies, if any) incurred by the terminating party in connection with such termination.

6.4. Effect of Termination. Upon termination or expiration of this Agreement for any reason whatsoever, Licensee shall immediately: (i) cease all use of the Source Code; and (ii) within ten (10) days, return or destroy (and have an authorized officer certify such destruction) the Source Code, including without limitation, removing all copies of Source Code from Licensee computers and storage media. In addition to the foregoing, Licensee agrees that it shall not, following termination or expiration of this Agreement, act in any way to damage the reputation or goodwill of Plucom Technology, the Software, any Enhancement, or any other product or software offered by Plucom Technology.

## **7. MISCELLANEOUS.**

7.1. Assignment. Licensee may not assign this Agreement or any of its rights or obligations hereunder without the prior written consent of Plucom Technology, such consent to be given at its sole discretion. Any attempted assignment without such prior written consent shall be void. Plucom Technology may assign all or part of this Agreement immediately, without the prior written consent of Licensee (i) to any successor in interest to Plucom Technology who assumes responsibility for Plucom Technology' obligations hereunder; or (ii) if necessary to satisfy the rules, regulations and/or orders of any federal, state or local governmental agency or body.

7.2. Dispute Resolution. Any dispute relating to this Agreement shall be submitted for binding arbitration under the Commercial Arbitration Rules of the Nigeria Arbitration Association and its Optional Procedures for Large, Complex Commercial Disputes. The arbitration shall be heard and determined by a panel of three (3) arbitrators selected by the NAA, and each such arbitrator shall be an attorney having experience and familiarity with information technology disputes. Judgment on any award entered therein may be entered in any court of competent jurisdiction. The venue for any such arbitration shall be in Lagos, Nigeria. In all cases, each party shall bear its own costs relating to such arbitration, and the parties shall equally share the arbitrators' fees unless provided otherwise in this Agreement or otherwise determined by the arbitrator, and the arbitration and all related proceedings and discovery shall take place pursuant to a protective order entered by the arbitrators that adequately protects the confidential nature of the parties' proprietary and confidential information. In no event shall any arbitration award provide a remedy beyond those permitted under this Agreement, and any award providing a remedy beyond those permitted under this Agreement shall not be confirmed, no presumption of validity shall attach, and such award shall be vacated. This agreement shall be governed by and construed in accordance with the laws of the state of Lagos, excluding its conflicts of law's provisions.

7.3. Severability. In the event that any portion of this Agreement is held to be unenforceable, the unenforceable portion shall be amended to reflect, to the greatest extent permitted under applicable law, the original intent of the parties, and the remainder of the provisions shall remain in full force and effect.

7.4. Waiver. Either party's failure to insist upon strict performance of any provision of this Agreement shall not be construed as a waiver of that or any other of its rights hereunder at any later date or time.

7.5. Force Majeure. With the exception of any payment obligations, neither party shall be liable for failing to perform its obligations hereunder (other than payment obligations) where delayed or hindered by war, riots, embargoes, strikes or acts of its vendors or suppliers, accidents, acts of God, or any other event beyond its reasonable control.

7.6. Notices. All notices including notices of address changes contemplated hereunder shall be deemed received on the third day after mailing if sent by mail, or immediately if sent by facsimile. Notices shall be sent to the addresses on the signature page hereof.

7.7. Survival. All terms and provisions of this Agreement that should by their nature survive the termination shall so survive.

7.8. Counterparts. This Agreement may be executed in separate counterparts including facsimile copies, each of which shall be deemed an original, and all of which shall be deemed one and the same instrument and legally binding upon the parties.

7.9. Entire Agreement. Each Exhibit is hereby incorporated by reference into this Agreement as if fully rewritten herein. This Agreement, including any Exhibits attached hereto and made part hereof, constitutes the entire agreement between Licensee and Plucom Technology with respect to the subject matter hereof. This Agreement supersedes any prior agreements, representations, or dealings between the parties.

7.10. Amendment. Plucom Technology reserves the right at any time to modify this Agreement without notice and to impose new or additional terms or conditions on your use of your use of the Software. Such modifications and additional terms and conditions will be effective immediately and incorporated

into this Agreement. Your continued use of the Software will be deemed acceptance thereof. Updated terms and conditions may be found at <http://www.plucomtechnology.com/term-of-license.aspx>.

7.11. Construction. The provisions of this Agreement are the product of discussion and negotiation by the parties, and no provision may be construed against either party by reason of its drafting of such provision.

7.12. Headings. The section headings herein are for convenience and reference purposes only and shall not serve as a basis for construction or interpretation.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by a duly authorized representative effective as of the date set forth at the top of this Agreement.

Release of Source Code Requires Prior Fully Paid Valid Plucom Technology "With Source" License

Release of Source Code Requires Adherence to Plucom Technology software End User License Agreement (EULA)

Release of source code does NOT allow Licensee to use source code except in conjunction with those Plucom Technology licenses. Release of source code does NOT release Licensee from our requirement of having a valid, paid in full, license for each Plucom Technology installed, or used, by Licensee per the Plucom Technology EULA. The terms of this Agreement augment those terms and conditions set forth in the EULA. The EULA was accepted by Licensee when purchasing the Plucom Technology licenses.

Release of Source Code Does Not Entitle Licensee to Updates Beyond Plucom Technology License Terms

Licensee is entitled to source code for only those versions of Plucom Technology software to which they would normally be entitled based upon their initial purchase and any additional support or upgrade Plucom Technology software license purchases made by Licensee.