

# **FMS License Agreement and Terms of Service**

## **Introduction**

This is a license agreement ("Agreement") between Nqolobane Technologies and its customers ("Customer"), in which Nqolobane Technologies grants customers certain rights to use the software program FMS ("Software").

Nqolobane Technologies is allowed at its sole discretion to assign the Agreement or any rights hereunder to any third party, without giving prior notice.

The license agreement shall be governed by and interpreted in accordance with the laws of Sweden, without reference to its conflict of law principles, and shall be subject to the jurisdiction of the courts of South Africa.

## **Copyright**

The Software, its source code and files are original works exclusively owned by Nqolobane Technologies and subject to copyright laws and international copyright treaties, as well as other intellectual property laws and treaties.

Any and all intellectual property rights in the Software, including the original works, or parts thereof, in any form, are and shall remain the exclusive property of Nqolobane Technologies. Nothing in this Agreement intends to transfer any such intellectual property rights to the Customer. The Customer will not take any action to jeopardize, limit or interfere with Nqolobane Technologies' rights.

## **License Limitations**

Subject to the terms of this Agreement, Nqolobane Technologies hereby grants you a limited, personal, non-exclusive, non-sublicensable, non-assignable license to download, install and use one instance of the Software. You may not sublicense, sell, assign, pledge, re-sell, transfer or otherwise dispose of the Software in any form, on a temporary or permanent basis, without the prior written consent of Nqolobane Technologies. Nqolobane Technologies reserves the right to refuse license transfers at their sole discretion.

Nqolobane Technologies may, but is not obligated to, provide you with updates or upgrades to the Software for free or subject to the payment of additional service fees. By installing, copying or otherwise using such update or upgrade, you agree to be bound by the terms of this Agreement with respect to such update or upgrade.

A license is valid only in relation to the designated license owner stated at the time of purchase of the license and any request for transfer of ownership must be made in writing to Nqolobane Technologies for consideration.

If the license is purchased by a registered company and no specific person is designated as the license owner, then the license owner will be deemed to be the then current CEO of the company. A company which is not registered at the time of purchase must name an owner for the license.

One license allows the Customer to install and use one copy of the Software. Each license is bound to an Internet domain name. If an Internet domain name is not available, an Internet IP address can be used instead. Changing the domain name that Software is registered for can be done only if the new domain name points to the exact same website or the previous domain name is no longer associated with an active web server.

Multiple identical instances of the same license can run simultaneously on the same domain name only for load balancing purposes.

The Customer may duplicate the Software's application files for load balancing, archival or backup purposes only.

## **License Fees**

The Software is purchased with a one-time fee that depends on the number of user accounts. There are no other costs involved, and no monthly fees or recurring billings.

## **User Accounts**

A user account refers to a unique "login name" that a person can use to access the Software's functions. There is no limitation on the number of people that can use, even at the same time, one user account.

## **Additional User Accounts**

The Customer may increase the number of user accounts the program is configured to support, by paying an additional one-time license fee for each additional user. The additional license fee shall be in accordance with the pricing displayed on the product website at the time of the initial license purchase.

## **Service and Support**

Each purchased license includes one (1) year of support service. Nqolobane Technologies shall assist the Customer in diagnosing errors and malfunctions at no additional costs during this period. Nqolobane Technologies reserves the right to charge additional fees for support services provided at a later time.

Nqolobane Technologies shall provide support services to Customer to attempt to correct diagnosed errors and malfunctions.

Nqolobane Technologies makes the following specific commitments to respond to requests for Technical Assistance from Customer:

1. to accept/acknowledge the support request within one (1) business day of receipt of request.
2. to inform Customer of current known status of the problem;
3. to provide a response within three (3) business days including options and estimated time for resolution.
4. to make best effort, for bona fide defect or problem report, to develop a software fix or workaround in a timely fashion.
- 5.
- 6.
- 7.

The technical assistance will be provided by email or web page only.

Nqolobane Technologies will not provide nor support customizations or modifications (functional or cosmetic). Troubleshooting problems caused by customizations is outside the scope of the support service.

Nqolobane Technologies may, but is not obligated to, provide technical assistance with problems related to features that depend on third-party software or online services.

Nqolobane Technologies is not required to fix problems caused by updates of the Software that failed to install properly. Such problems will be fixed only if the updates were installed by an Nqolobane Technologies employee.

## **Customer Responsibilities**

Customer should make commercially reasonable efforts to keep current with the latest release of Program provided by Nqolobane Technologies.

The Customer should designate the appropriate individual for contacting Nqolobane Technologies for software support. The total number of Customer contacts should not exceed 1 (one) at any given time.

## **Miscellaneous**

The Customer may not reverse engineer, decompile, disassemble or make public the source code of the Software.

## **Refund Policy**

During the first 30 days after the initial license purchase, the Customer can request the cancellation of the license, followed by a refund on the amount paid. If bank wire transfer has been used for the payment, the refunded amount will exclude the banking fees.

A refund is possible only if Nqolobane Technologies has not provided any installation, configuration or customization services during this time.

## **Limitations of Liability**

To the fullest extent permitted by law, in no event will Nqolobane Technologies, its affiliates, officers, employees, agents, suppliers or licensors be liable for any damages whatsoever, including - but not restricted to - lost revenue or profits or other direct, indirect, special, incidental or consequential damages, even if they have been advised of the possibility of such damages.

## **No Warranty**

The Software and this license document are provided AS IS with NO WARRANTY OF ANY KIND, INCLUDING THE WARRANTY OF DESIGN, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

## **Data Privacy**

The Customer retains full ownership to the data managed with the use of the Software. These Terms do not grant Nqolobane Technologies any rights to the Customer's data or intellectual property. Nqolobane Technologies will not share your data with others, including law enforcement, for any purpose, unless the Customer directs Nqolobane Technologies to do so.

The Software provides features that allow the Customer to share data with others or to make it public. The Customer should consider carefully what he chooses to share or make public. Nqolobane Technologies has no responsibility for what other people might do with the Customer's data. The Customer is the solely responsible for his conduct, the content of his files and folders, and the communications with others while using the Software. The Customer, and not Nqolobane Technologies, is responsible for maintaining and protecting all of your data.

## **Termination of License**

Any violation against this license or its intended meaning will result in the immediate termination of this license and all rights given to the Customer. The Customer shall stop using the Software, remove the Software installation from his computer, and permanently erase all copies of the Software.