

Dated:

"We" and "us" means Darklake Developments Limited, The Senate, Southernhay Gardens, Exeter, Devon EX1 1UG (company registered in England, No 07301565, whose registered office is at 4 Old Vicarage Close, Ide, Exeter, Devon EX2 9RE).

"We" (the software supplier).

"You" means [*Full name of distributor and trading address*], (the appointed distributor of the software]

We are prepared to supply to you the software listed in Part I of the First Schedule (and associated documentation)("the Software") and you are prepared to distribute it [on equipment listed in Part II of the First Schedule] in [] ("the Territory") in accordance with these terms.

WE AGREE WITH EACH OTHER AS FOLLOWS:

1. Grant

1.1. We grant to you and you accept a [non-exclusive] right to sell the Software in accordance with the terms of the Fourth Schedule and generally to sell, market, distribute and support the Software ("the Services") [under our trade mark] in the Territory [for use on the Equipment] until this Agreement ends.

1.2. To "sell software" means to act as our agent in causing end-users to enter into licence agreements in respect of that software in terms that we specify.

[Nothing in this Agreement prevents us from either selling direct to customers or appointing further distributors in the territory. However, we will usually give you 90 days notice before we do either.]

2. Term

2.1 This Agreement shall start on ("the Start Date") and shall continue for [] years and from year to year thereafter until or unless terminated by either of us giving to the other not less than [] months written notice or unless terminated earlier in accordance with these terms.

3. Technical Information

3.1. [We shall give to you one copy of

all written information which we deem necessary for you to use in providing the Services in the Territory, including the information contained in this Agreement's Third Schedule.]

3.2. We shall keep you informed of any changes, additions or modifications to the information that has an effect on the operation, cost or performance of the Software.

3.3. You will make sure that, on all copies made of such information, you legibly reproduce our copyright symbol, legend or clause or, if there is not one, insert our copyright symbol [or that of the Software owner.]

4. Training

4.1. We will train at a cost (if any) as will be notified to you and at a place to be nominated by us (in writing), your key demonstrator, technical and sales personnel.

4.2. Two people (unless otherwise agreed by us) from each of those categories of your personnel may take that training

4.3. We shall for all enhanced or new software brought out by us and included in this Agreement provide a similar training programme.

4.4. You may ask us to make available additional training facilities at your expense.

5. **Commercial and Technical Assistance**

5.1. In addition to training provided for in Clause 4 above, we will from time to time until this Agreement ends, at your request, give you adequate commercial and technical assistance in connection with the distribution and marketing of the Software. The cost of that assistance will be agreed in advance between us and in writing.

6. **Ordering of Software**

6.1. You agree to order from us the minimum number of copies of the Software stated in the Second Schedule.

6.2. Orders for copies of the Software shall be communicated in writing, to us at the above address or at such other address as we may from time to time notify to you. All orders shall (as far as possible) contain the names and addresses of the proposed end-users in order that we may accurately allocate a particular serialisation number for each end-user.

6.3. Orders shall not be binding on us unless and until accepted by us in writing.

6.4. We will try to fulfil accepted orders for Software with reasonable speed but shall not be liable in any way for any loss of trade or profit or any other loss occurring to you in the event of delivery being frustrated or delayed.

6.5. In the event that you fail to order and pay for the minimum number of copies of Software specified in the Second Schedule, we shall be entitled to charge you for its value and, at our option, terminate this Agreement without us incurring any liability [and/or make the Agreement non-exclusive].

7. **Delivery of Software**

7.1. We will send Software to you by post or by another carrier which

we may in our absolute discretion choose, to your above address or to such other address as you shall from time to time notify to us as your delivery address within the Territory.

7.2. You will pay carriage charges for delivery of Software.

7.3. Software shall be at your risk in transit.

7.4. While at any time you are in breach of any of your obligations under this Agreement we may, for so long as the breach continues (but without prejudice to any other rights we may have under this Agreement), withhold delivery of Software to you even if we have accepted orders for them.

8. **Payment**

8.1. We shall, upon dispatch, invoice you for the Licence Fees payable in respect of each copy of Software ordered by you as specified in the Second Schedule (which may be amended from time to time by us by giving to you not less than thirty (30) days prior notice). The total invoice sum shall be due and payable fourteen (14) days after the date of invoice.

8.2. We reserve the right to charge interest at the [the Statutory Rate of Interest applicable under the Late Payment of Commercial Debts \(Interest\) Act 1998 \(irrespective of whether such Act applies to this agreement\)](#).

8.3. In the event of non-payment, we shall have the right to revoke your Licence [and your authority to license and sub-license]. We may repossess any copies of the Software for which we have not received payment and any documentation, data, records or information relating to it. We or any one or more of our agents or authorised representatives shall be entitled at any time and without notice to enter upon any premises

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- in which the same are or are reasonably believed by us, to be kept, stored or used to repossess those copies or documentation etc.
- 8.4. In any event, we may, in our sole discretion, invoice any end-user directly for any licence fees payable in respect of Software supplied by us or on our behalf if you have failed to collect them from the end-user or you are otherwise in breach of this Agreement.
9. **Licence to End-Users**
- 9.1. You shall ensure that before you deliver Software to an end-user, that end-user enters into the software licence agreement accompanying each copy of the Software, the terms and conditions of which are contained in the Fourth Schedule (which we may amend from time to time).
- 9.2. You are granted the limited right to act as our agent and on our behalf in entering into the software licence agreement accompanying the software. YOU ARE EXPLICITLY NOT PERMITTED TO ACT AS OUR AGENT ON ANY OTHER BASIS WHATEVER AND YOU AGREE TO FULLY INDEMNIFY US FROM ANY CONSEQUENCES THAT ARISE IF YOU DO SO.
10. **Licence to Distributor**
- 10.1. This Agreement also operates as a licence for you to use the Software on the Equipment for demonstration, testing, support and such other purposes directly connected with this Agreement. This right shall continue until this Agreement ends.
- 10.2. You shall not modify, amend, add to or in any way alter any Software supplied to you under this Agreement without our prior written consent.
11. **Enhancements and Modifications**
- 11.1. We will notify you of any material enhancement or modification to the Software which affects its operation, performance or cost. We reserve the right to introduce any substitute software which will fulfil the same function as the software it replaces.
12. **Software Support**
- 12.1. During the continuance and (if so required by us) after the termination of this Agreement (for whatever reason) you shall maintain an efficient and effective call control facility to deal with fault calls relating to the Software and an efficient and effective support staff, sufficiently widespread throughout the Territory to respond properly to such calls. This facility shall apply to end-users of Software supplied by you under this Agreement and to end-users supplied with the Software (whether before or after the commencement of this Agreement) by others [so long as those end-users are using the Software on the Equipment].
- 12.2. We shall provide back-up support for you when reasonably required and upon the terms and for the charges specified in the Fifth Schedule (which we may amend from time to time giving you thirty (30) days prior written notice).
- 12.3. Specifically, and in addition to the general obligations in (a) above you shall provide all end-users with the following support services:
- 12.3.1. proper training for the end-users' operators in the use of the Software;
- 12.3.2. prompt receipt, analysis and reporting of reported faults in the operation of the Software;
- 12.3.3. prompt replacement of the master copy of any corrupted or damaged Software (such replacement being obtained from us);
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12.3.4. technical information and advice on the use of the Software.

13. Your Obligations

13.1. You agree with us that you will at all times during the continuance in force of this Agreement and where applicable, following its termination comply with the terms and conditions set out in this Agreement and in particular:

13.2. will use at all times your best endeavours to promote and extend the market for the Software to all potential licensees in the Territory and work diligently to obtain orders;

13.3. will at your own expense provide advertising and publicity for the Software as extensive as the advertising and publicity provided by you for other goods of similar type to the Software which you distribute;

13.4. will not without our prior consent in writing be involved or interested (either directly or indirectly) in the production, importation, sale, licensing or advertisement of any software which is so like or similar to the Software as to be capable of restricting, competing or otherwise interfering with or which might otherwise restrict or interfere with the market for the Software;

13.5. will, in all correspondence and other dealings relating directly or indirectly to the licensing or other transaction relating to the Software, clearly indicate that you are acting as Distributor and not as author or developer of the Software;

13.6. will not incur any liability on our behalf or in any way pledge or purport to pledge our credit or purport to make any contract binding upon us;

13.7. will not alter, obscure, remove, conceal or otherwise interfere with

any eye-readable or machine-readable marking on the Software or its packaging which refers to us as author or developer of the Software or otherwise refers to our copyright or other intellectual property rights in the Software [or that of the owner of the Software];

13.8. will allow any of our authorised representatives upon reasonable notice to enter any of your premises where any Software (or anything relating to it) are stored so that we can check that you are complying with your obligations.

13.9. will immediately tell us if you come across any improper or wrongful use of our (or that of the owner) trade marks, emblems, designs, models or other similar industrial, intellectual or commercial property rights which come to your notice and will in the performance of your duties under this Agreement use every effort to safeguard our property rights and interests [and that of the owner] and will at our request and cost take all steps required by us to defend such rights;

13.10. will immediately tell us if you receive any information which is likely to be of interest, use or benefit to us in relation to the marketing and/or support of the Software;

13.11. will keep full, proper and up to date accounting records showing clearly all enquiries, transactions, proceedings and fault calls relating to the Software and its distributorship generally and will allow our authorised representative access to them and to take copies;

13.12. will from time to time on request by us, supply to us reports, returns and other information relating to your distributorship.

14. Warranty

14.1. We do not warrant or represent

that the Software will be error-free but if any copy of the Software is demonstrated to us within ninety (90) days from the date of its delivery to you to contain an error or malfunction, or is otherwise substantially inconsistent with its documentation, we will use all reasonable endeavours to correct such error or malfunction or (at our option) replace such copy of the Software free of charge PROVIDED THAT:

- 14.1.1. the Software has been used at all times properly and in accordance with instructions for use; and
- 14.1.2. no alteration, modification or addition has been made to the Software without our prior written consent; and
- 14.1.3. the alleged error, malfunction or inconsistency has been notified to us within the warranty period specified above.
- 14.2. Each claim by you under this warranty shall be sent in writing, by post or by fax, to us specifying the type of Software involved and the nature of the alleged error or malfunction. Upon receipt of such written claim, we or our agent or representative shall have the right to test or to inspect the Software at its then location or to have the Software despatched to a point designated by us or returned to us carriage pre-paid. Software replaced or corrected under warranty shall be sent by us to you carriage pre-paid.
- 14.3. Except as otherwise provided in this Clause, we make no other representations or warranties with respect to the Software.
- 14.4. Although we do not warrant that the Software supplied hereunder shall be free from all known viruses we have used commercially reasonable efforts to check for the most commonly known viruses prior to packaging but you are solely responsible for

virus scanning the Software.

- 14.5. [We warrant that the disabling devices in the Software will only be used in relation to you in the event that you are in breach of this Agreement in accordance with the provisions of Clause 18 below; and in relation to any end-user, in accordance with the terms of the software licence agreement contained in the Fourth Schedule. YOU ACKNOWLEDGE THAT YOU ARE AWARE THAT THE SOFTWARE CONTAINS DISABLING DEVICES]

15. **Liability**

- 15.1. Except to the extent that by statute liability may not lawfully be excluded in an Agreement of this nature and between the parties, any statement, representation, condition, warranty or other term express or implied, statutory or otherwise, as to the quality, merchantability, suitability or fitness for any particular purpose of the Software is excluded and we shall not be liable to you or to any other persons by reason thereof or any duty, statutory or otherwise, for any loss or damage (whether direct or consequential) arising directly or indirectly in connection with the Software (or any modification, variation or enhancement), or any documentation, manual or training relating to it.
- 15.2. You agree to take out and maintain adequate insurance cover with a reputable insurance company approved by us against any liability which you or we may incur to an end-user or to any other person in connection with the Software or its support. You shall upon request produce to us the policy of such insurance, the premium receipt and insurance certificate.

16. **Copyright, Patents, Trade Marks and Other Intellectual Property Rights**

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- 16.1. You acknowledge that any and all of the copyright, trade marks and other intellectual property rights subsisting in or used in connection with the Software including all documentation and manuals relating thereto are and shall remain our property and/or that of the licensor specified in the software licence agreement contained in the Fourth Schedule (the "Licensor") and you shall not during or at any time after the expiry or termination of this Agreement in any way question or dispute either our, or the Licensor's ownership of it.
- 16.2. You also acknowledge that copyright, trade marks and other rights belonging to us or the Licensor may only be used by you with our consent and during this Agreement. Upon expiry or termination you shall immediately stop that use (without any right of compensation), provided however that you may continue to use any trade marks relating to the Software and support for a period following expiry or termination for the purpose and to the extent only of continuing the support of the Software required to be provided by you under this Agreement unless we tell you that such right has been revoked.
- 16.3. You shall not during or after the expiry or termination of this Agreement, without our written consent, use or adopt any name, trade name, trading style or commercial designation that includes or is similar to or may be mistaken for the whole or any part of any trade mark, trade name, trading style or commercial designation used by us or Licensor.
17. **Confidential Information**
- 17.1. We have imparted and may from time to time impart to you certain confidential information relating to the Software, successor or enhanced software or our other software or marketing or support (including specifications) and you may otherwise obtain confidential information concerning our business and affairs pursuant to this Agreement. You agree to use that confidential information only for the purposes of this Agreement and that you shall not disclose, whether directly or indirectly, to any third party that information other than as required to carry out the purposes of this Agreement. In the event of and prior to such disclosure, you will obtain from third parties binding and effective confidentiality agreements relating to the information to be disclosed which are at least as effective as your obligations of confidentiality to us.
- 17.2. You agree that upon expiry or termination of this Agreement you shall not yourself or through any subsidiary or agent or otherwise, sell, license, sub-license, market, distribute or otherwise deal with any of the Software (in whole or in part) except to the extent permitted by the applicable law or develop any software or have any software developed through use of any confidential information supplied to you by us, or in any other way obtained by you pursuant to this Agreement.
- 17.3. Despite the above provisions, you shall not be required to prevent the disclosure or use of any information which through no fault of yours, is or becomes public knowledge or to the extent permitted by law.
18. **Termination or Expiry**
- 18.1. Despite any other provisions, this Agreement may be immediately terminated by either party by notice in writing from the party not at fault if any of the following events happens:
- 18.1.1. if the other party is in breach of this Agreement and fails to remedy the breach (if it can be
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- remedied) within thirty (30) days from receipt of notice in writing from the first party specifying the breach;
- 18.1.2. if the other party commits any act of bankruptcy, shall have a receiving order made against it, shall make or negotiate for any composition or arrangement with or assignment for the benefit of its creditors or if the other party being a body corporate, shall present a petition or have a petition presented by a creditor for its winding up or shall enter into any liquidation (other than for the purpose of reconstruction or amalgamation), shall call any meeting of its creditors, shall have a receiver of all or any of its undertakings or assets appointed, shall be deemed by virtue of the relevant statutory provisions under the applicable law to be unable to pay its debts, or shall cease to carry on business;
- 18.1.3. if either party is by any cause (other than a cause directly attributable to the other party) prevented from performing its obligations under this Agreement for a period of three (3) consecutive months or for a total period of six (6) months in any period of twelve (12) consecutive months.
- 18.2. If any event referred to in this sub-clause occurs, termination shall become effective immediately or, if there is a date in the notice, on that date.
- 18.3. The expiry or termination of this Agreement shall not affect any rights of the parties which accrued up to the date of expiry or termination.
- 18.4. Upon expiry or termination (for whatever reason) of this Agreement, you shall return or destroy (as we shall instruct) within no more than fourteen (14) days after expiry or termination, all Software, documentation, technical information and any other data supplied to you during the continuance of this Agreement and all and any copies made of the whole or any part of it and you will confirm in writing that you have complied with the notice (except with respect to supporting software, information and data which we determine is necessary to enable you to continue to support the Software beyond the date of expiry or termination where we permit or require you so to do).
- 18.5. Where you have entered into support agreements, maintenance agreements and licence agreements with customers ("customer agreements") we shall at our discretion be entitled to accept the assignment of both the benefit and the burden of any such agreements after termination.
19. **Force Majeure**
- 19.1. We shall not be under any liability to you or to any other party in any way whatsoever for destruction, damage, delay or any other matters of any nature at all which arise from war or civil disorder; strikes, lock-outs or industrial disputes; fire, explosion, earthquake, acts of God, flood, drought or bad weather; the unavailability of deliveries, supplies, software, disks or other media or the requisitioning or other act or order by any government department, other legally constituted body.
20. **Changes in your structure or ownership**
- 20.1. Unless we otherwise agree, you shall not, without first advising us, permit or allow:
- 20.1.1. where you are a body corporate:
- 20.1.1.1. a controlling interest in you to pass to any person(s) other than those having a controlling interest at the date of this Agreement (whether by reason of purchase of
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- shares or otherwise);
- 20.1.1.2. a change to take place in the Board of Directors;
- 20.1.1.3. yourself to undergo any reorganisation or have any part of your business transferred to a subsidiary or associated company;
- 20.1.1.4. your name to be changed;
- 20.1.2. where you are a partnership:
 - 20.1.2.1. any change in the partnership name or constitution;
 - 20.1.2.2. any partner to retire, resign or otherwise leave the partnership;
 - 20.1.2.3. any new partner to be added to the partnership.
- 20.2. In each case we may terminate this Agreement without liability before any one or more of the above events occurs subject to our right to claim compensation for termination.

21. Relationship between the parties

- 21.1. You agree and understand that you are not our agent or representative and you have no authority or power to bind or contract in our name or to create any liability against us in any way or for any purpose.
- 21.2. You understand that you are an independent contractor with non-exclusive rights confirmed by this Agreement to license, sub-license, market, distribute and support the Software on your own accord and responsibility in the Territory.
- 21.3. This agreement is not a partnership agreement.

22. Waiver

- 22.1. If either of us fails to rely on our strict legal rights under this Agreement, that shall not prevent either of us from relying on those rights at any time in the future.

23. Assignment

- 23.1. You will not be assign (or attempt to assign) this Agreement, or any

of your rights under it, whether voluntarily or involuntarily or by operation of law, in whole or in part, to any party without our prior written consent. No assignment by you (however it occurs) shall relieve you of your obligations.

24. Notices

- 24.1. Any notice required or permitted under the terms of this Agreement or required by statute, law or regulation shall (unless otherwise provided) be in writing and shall be delivered in person, sent by registered mail or air mail as appropriate, properly posted and fully prepaid in an envelope properly addressed or sent by e-mail to the respective parties as follows:

US

Address: The Senate, Southernhay Gardens, Exeter EX1 1UG

E-mail: admin@darklakedev.com

YOU

Address:

E-mail:

- 24.2. or to such other mailing or e-mail address, or facsimile number as may from time to time be designated by notice. Any such notice shall be in the English language and shall be considered to have been given at the time when actually delivered if delivered by hand, or upon the next working day following sending by facsimile or in any other event within 3 days after it was correctly posted.

25. Disputes

- 25.1. If a dispute arise under this Agreement which cannot be dealt with by agreement between us, we both agree that the dispute will be referred to successively higher levels of management, until it is either agreed, or until our respective chief executives fail to

reach an agreement, at which point we both agree in good faith to submit to the mediation procedure administered by ADR Group of Bristol or failing them any other comparable body nominated by the President for the time being of the Law Society.

26. **Agreement**

26.1. This Agreement overrides any arrangements, understandings, promises or agreements made or existing between us prior to or simultaneously with this Agreement and constitutes the entire understanding between us both. (Except where the agreement states otherwise) no addition, amendment to or modification of this Agreement shall be effective unless it is in writing and signed by and on behalf of both of us.

27. **Headings**

27.1. Headings in this Agreement are there for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement.

28. **Severability**

28.1. In the event that any or any part of the terms, conditions or provisions contained in this Agreement are determined by any competent authority to be invalid, unlawful or unenforceable to any extent such term, condition or provision shall to that extent be severed from the remaining terms, conditions and provisions which shall continue to be valid and enforceable to the fullest extent permitted by law.

29. **Law**

29.1. This Agreement is subject to English law.

Signing Provisions

SIGNED for and on behalf of
[] by:

In the presence of:

Date:
SIGNED for and on behalf of
[] by:

In the presence of:

Date:
Schedules

THE FIRST SCHEDULE

PART I
The Software

THE FIRST SCHEDULE

PART II
The Equipment

THE SECOND SCHEDULE as at / /19[]

Type and minimum No. of copies of Software	Licence Fee per copy of Software payable by you to us

Valid Until Further Notice from us.

THE THIRD SCHEDULE

Technical Information.

THE FOURTH SCHEDULE

Software Licence.

THE FIFTH SCHEDULE

Our Support Terms and Charges to you.