

SOFTWARE DISTRIBUTION AGREEMENT

This Software Distribution Agreement (the "Agreement") is effective [DATE],

BETWEEN: [YOUR COMPANY NAME] (the "Company"), a company organized and existing under the laws of the [State/Province] of [STATE/PROVINCE], with its head office located at:

[YOUR COMPLETE ADDRESS]

AND: [COMPANY NAME] (the "Distributor"), a company organized and existing under the laws of the [State/Province] of [STATE/PROVINCE], with its head office located at:

[COMPLETE ADDRESS]

RECITALS:

- (A) The Company is the proprietor of certain computer software known as "[SPECIFY]".
- (B) The Company has agreed to appoint the Distributor as its non-exclusive distributor to distribute and sub-license such software and its associated documentation in the Territory (as hereinafter defined) on the terms and conditions hereinafter contained.

NOW IT IS HEREBY AGREED as follows:

1. DEFINITIONS

In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

- 1.1. "Business day" means a day other than a Saturday, Sunday or a public holiday;
- 1.2. ["Distributor Modifications" means all modifications and enhancements of the Software made by the Distributor pursuant to paragraph 7.4 but excluding any such modifications or enhancements which are adopted by the Company and embodied in the Software from time to time.]
- 1.3. "End-User Agreement" means a software license and support agreement in the form set out in Schedule 1 or in such other form as the Company may from time to time direct or approve in writing and as the same may be amended from time to time.
- 1.4. "Intellectual property rights" means patents, trademarks, service marks, registered designs, applications for any of the foregoing, copyright, design rights, know-how, confidential information, trade and business names and any other similar protected rights in any country.
- 1.5. "Licensee" means a person situated in the Territory who is a party to an End-User Agreement with the Distributor and the Company in respect of the Software.
- 1.6. "Product Description" means the product description of the Software describing the facilities and functions thereof as supplied to the Distributor by the Company from time to time.
- 1.7. "Software" means the Company's ["."] software and all modifications, enhancements and replacements thereof and additions thereto provided by the Company and made available to the Distributor from time to time pursuant to this Agreement [but excluding Distributor Modifications].

- 1.8. "Software Documentation" means the operating manuals and other literature provided by the Company to the Distributor from time to time for use by end-users in conjunction with the Software.
- 1.9. "Software Materials" means the Software, the Product Description and the Software Documentation.
- 1.10. "Source Materials" means all logic, logic diagrams, flowcharts, orthographic representations, algorithms, routines, sub-routines, utilities, modules, file structures, coding sheets, coding, source codes listings, functional specifications, program specifications and all other materials and documents necessary to enable a reasonably skilled programmer to maintain, amend and enhance the software in question without reference to any other person or documentation and whether in eye-readable or machine-readable form.
- 1.11. "Support Services" means the software support services provided or to be provided by the Distributor pursuant to each End-User Agreement.
- 1.12. "Territory" means "[SPECIFY]"
- 1.13. "Year" means any period of [NUMBER] months commencing on the date of [DATE] or any anniversary of the date hereof.

2. APPOINTMENT

- 2.1. The Company hereby appoints the Distributor and the Distributor hereby agrees to act as the non-exclusive distributor of the Company to distribute and sub-license the Software Materials in the Territory.
- 2.2. The Distributor shall not be entitled to assign or sub-contract any of its rights or obligations under this Agreement or appoint any agent to perform such obligations.
- 2.3. The Distributor represents and warrants to the Company that it has the ability and experience to carry out the obligations assumed by it under this Agreement and that by virtue of entering into this Agreement it is not and will not be in breach of any express or implied obligation to any third party binding upon it.

3. DURATION

This Agreement shall commence on the date of [DATE] hereof for an initial period of [NUMBER] years and shall continue thereafter [unless or] until terminated by either party giving to the other not less than [NUMBER] months' written notice [expiring] [given] on the last day of the said initial period or at any time thereafter, but shall be subject to earlier termination as hereinafter provided.

4. DISTRIBUTION AND SUB-LICENSING

- 4.1. The Company hereby grants to the Distributor a non-exclusive license to reproduce, distribute and sub-license the Software and the Software Documentation and provide the Support Services on the terms and conditions set out in this Agreement.
- 4.2. Save as contemplated by paragraph 6.2.3, the Distributor will make the Software available to licensees in object code form only.

- 4.3. The Software and the Software Documentation shall not be made available without the Support Services and both shall be made available to end-users by the Distributor only on the terms of an End-User Agreement which all parties thereto have executed.
- 4.4. Except as provided in paragraph 5.2, the Distributor shall not deliver possession of any copies of the Software or the Software Documentation to any third party unless that person has first executed an End-User Agreement.
- 4.5. The Distributor shall enter into End-User Agreements only with persons situated in the Territory and whereby the Software is to be used only in the Territory.
- 4.6. Within [NUMBER] days after the execution of this Agreement, the Company shall provide the Distributor with a master copy of the Software (in machine-readable form), the Software Documentation and the Product Description suitable for reproduction of multiple copies by the Distributor. Thereafter, the Company will provide the Distributor promptly with master copies, suitable for reproduction, of any new versions of the Software Materials in the event that the Company releases any modifications, enhancements or replacements of or additions to any of the Software Materials.
- 4.7. The Distributor shall reproduce the Software Materials only in identical form to the master copies provided by the Company (and in particular shall reproduce the Company's copyright and proprietary notices on every such reproduction) and shall only make such number of copies as are necessary to satisfy the Distributor's obligations pursuant to End-User Agreements together with a reasonable number of copies for demonstration, support and training purposes.
- 4.8. The Distributor shall enter into End-User Agreements only with prospective licensees whom the Distributor reasonably believes are responsible and likely to comply with their obligations under an End-User Agreement.
- 4.9. The Distributor undertakes to the Company to comply with and perform its obligations under each End-User Agreement fully and promptly.
- 4.10. If the Distributor fails to comply with any of its obligations under an End-User Agreement the Company may effect compliance on behalf of the Distributor whereupon the Distributor shall forthwith become liable to pay to the Company all reasonable costs and expenses incurred by the Company as a result.
- 4.11. The Distributor shall ensure that only the current versions of the Software and the Software Documentation supplied to the Distributor from time to time are delivered to licensees and shall make any new or modified versions available to licensees promptly.
- 4.12. The Distributor shall at all times take proper care of any copies of the Software and the Software Documentation which are from time to time in its possession or under its control.
- 4.13. The Distributor shall deliver copies of the Product Description to bona fide prospective licensees only.
- 4.14. If any licensee breaches the terms of his End-User Agreement the Distributor shall use all reasonable endeavours to procure that the breach is remedied but if the Distributor is unsuccessful or the breach is incapable of remedy the Distributor shall (if it is entitled so to do) terminate the End-User Agreement in accordance with its terms and exercise its rights to recover the Software Materials from the licensee or procure that they are destroyed.

5. DEMONSTRATION

- 5.1. The Distributor shall be entitled to demonstrate the Software and the Software Documentation to any bona fide prospective licensee but (subject as provided in paragraph 5.2) shall always retain the Software and the Software Documentation in its possession under its control and shall not allow any such person to retain any copies of the whole or any part thereof.
- 5.2. With the prior written approval of the Company, the Distributor may deliver a copy of any new or enhanced version of the Software and the Software Documentation to a bona fide prospective licensee or an existing licensee for evaluation purposes subject to the prospective licensee or existing licensee entering into the Company's standard Beta Test Agreement in force from time to time.

6. SOURCE MATERIALS

- 6.1. Within [NUMBER] days after the execution of this Agreement, the Company shall provide the Distributor with one copy of the Source Materials relating to the Software. At the same time as any modified, enhanced or replacement version of or addition to the Software is delivered to the Distributor pursuant to paragraph 4.6 the Company shall provide the Distributor with one copy of the Source Materials relating thereto.
- 6.2. The Distributor shall use the Source Materials relating to the Software solely for the purposes of:
 - 6.2.1. providing the Support Services;
 - 6.2.2. analysis to determine the correct interfaces between any other programs supplied by the Distributor and the Software; and
 - 6.2.3. depositing copies of the same pursuant to source code escrow arrangements requested by the licensees.and shall only make such number of copies as are reasonably necessary for those purposes.
- 6.3. Any source code escrow arrangements to be entered into by the Distributor with licensees shall be subject to the prior written approval of the Company and no copies of the Source Materials relating to the Software shall be delivered to any escrow agent without such approval.
- 6.4. Save as permitted by paragraphs 6.2.3 and 6.3, no copy of the Source Materials or any part thereof shall be made available to any third party by the Distributor.

7. CORRECTIONS [AND MODIFICATIONS]

- 7.1. The Distributor shall promptly notify the Company of any error or defect in the Software Materials of which it becomes aware and give the Company documented examples of such faults.
- 7.2. The Company shall within [NUMBER] business days of receipt of such notification evaluate the notified fault and provide the Distributor an estimate of the length of time it will take to issue a master copy of a correction under paragraph 4.5. The Company will use its reasonable endeavors to provide such master copy within the estimated timescale.
- 7.3. Pending the delivery of the said master copy the Distributor shall be entitled to take, with the prior approval of the Company (such approval not to be unreasonably withheld or delayed), such measure and give such advice as may be necessary to provide a temporary solution to the fault for licensees.

- 7.4. The Distributor may modify or enhance the Software for a particular purpose as it deems fit. The Distributor shall promptly provide the Company with a copy of all such modifications and enhancements and the Source Materials relating thereto and details of any licensees to whom such modifications or enhancements have been provided. The Distributor Modifications and the Source Materials relating thereto and the intellectual property rights therein or relating thereto shall be the absolute property of the Company and the Distributor hereby, as beneficial owner, assigns (by way of present and future assignment) to the Company all such property and intellectual property rights free from any encumbrance. The Distributor shall assume full responsibility for the Distributor Modifications.
- 7.5. The Company may but shall have no obligation to make any corrections to Distributor Modifications pursuant to paragraph 7.2 and any warranties, indemnities and other obligations given or assumed by the Company in respect of the Software shall be void as to Distributor Modifications. In the event that the Company agrees to support any Distributor Modifications such support shall be provided to the Distributor on a time and materials basis at the Company's standard rates in force from time to time. Save as provided above, all provisions of this Agreement shall apply to Distributor Modifications and the Source Materials relating thereto, mutatis mutandis, as they apply to the Software and the Source materials relating to the Software.

OR

Save as permitted by sub-paragraph 7.3, the Distributor shall not alter or modify the whole or any part of the Software in any way whatever nor permit the whole or any part of the Software to be combined with, or become incorporated in, any other programs.

8. TRAINING

- 8.1. The Company shall provide training in the installation, implementation and use of the Software for the Distributor's personnel as specified in Schedule 2.
- 8.2. Any additional training required by the Distributor shall be provided by the Company in accordance with its standard scale of charges in force from time to time.
- 8.3. The Distributor shall offer training courses for licensees at its standard rates in force from time to time and the [NUMBER] shall use its reasonable endeavours to persuade all licensees to complete training courses in accordance with the Company's minimum recommendations from time to time.

9. DISTRIBUTOR'S OBLIGATIONS

The Distributor shall:

- 9.1. use its best endeavours to promote and extend the licensing of the Software throughout the Territory;
- 9.2. promptly inform the Company of any facts or opinions of which the Distributor becomes aware likely to be relevant in relation to the commercial exploitation of the Software and which are advantageous or disadvantageous to the interests of the Company;
- 9.3. at all times conduct its business in a manner that will reflect favorably on the Software and on the good name and reputation of the Company;
- 9.4. not by itself or with others participate in any illegal, deceptive, misleading or unethical practices including, but not limited to, disparagement of the Software of the Company or other practices which may be detrimental to the Software, the Company or the public interest; either:

- 9.5. [not during the continuance of this Agreement (whether alone or jointly and whether directly or indirectly) be concerned or interested in the marketing, distribution, licensing or sale of any software products which are similar to or competitive with the Software or which perform the same or similar functions;]

OR

at all times display, demonstrate and otherwise represent the Software fairly in comparison with competitive products from other suppliers;

- 9.6. at all times employ a sufficient number of full-time staff who are capable of competently demonstrating the Software to prospective licensees;
- 9.7. at all times maintain adequate demonstration facilities for the Software;
- 9.8. supply to the Company such reports, returns and other information relating to orders and projected orders for the Software and regarding licensees as the Company may from time to time reasonably require;
- 9.9. not make any promises or representations or give any warranties, guarantees or indemnities in respect of the Software Materials except such as are contained in an End-User Agreement or as expressly authorized by the Company in writing and shall not supply the Software to any person knowing that it does not meet that person's specified requirements;
- 9.10. use the Company's trade names relating to the Software only in the registered or agreed style in connection with the distribution and sub-licensing of the Software and shall not use such trade marks or trade names in connection with any other products or services or as part of the corporate or any trade name of the Distributor;
- 9.11. not alter, obscure, remove, interfere with or add to any of the trade marks, trade names, markings or notices affixed to or contained in the Software Materials delivered to the Distributor;
- 9.12. not supply or recommend any computer equipment to a licensee for use in conjunction with the Software save for the equipment which is contained in the Company's current Recommended Compatible Hardware list supplied to the Distributor from time to time;
- 9.13. permit the Company and its authorized agents at all reasonable times to enter any of the Distributor's premises for the purpose of ascertaining that the Distributor is complying with its obligations under this Agreement (and so that the Distributor hereby irrevocably licenses the Company, its employees and agents to enter any such premises for such purpose).

10. COMPANY'S OBLIGATIONS

The Company shall:

- 10.1. provide the Distributor with such marketing and technical assistance as the Company may in its discretion consider necessary to assist the Distributor with the promotion of the Software;
- 10.2. endeavour to answer as soon as possible all technical queries raised by the Distributor or licensees concerning the use or application of the Software;
- 10.3. provide the Distributor with a reasonable number of copies of any promotional literature relating to the Software which the Company may produce from time to time;

- 10.4. give the Distributor reasonable advance written notice of any change in or modification of the Software or of the Company's intention to discontinue licensing or sub-licensing the Software in the Territory;
- 10.5. provide the Distributor promptly with all information and assistance necessary to enable the Distributor properly to perform its obligations hereunder in respect of any modified, enhanced or replacement version of or addition to the Software.

11. ROYALTIES AND PAYMENTS

- 11.1. The Distributor agrees to pay to the Company royalties in respect of each End-User Agreement entered into by the Distributor.
- 11.2. The royalty amount shall be of [PERCENTAGE %] of the Company's standard price of the Software ("License Royalty") for each license fee levied by the Distributor under an End-User Agreement and [PERCENTAGE %] of the Company's standard annual support charge levied by the Distributor under an End-User Agreement, both as shown on the Company's [COUNTRY] domestic price list in force from time to time. The Company shall give the Distributor at least [NUMBER] days' advance notice of any change to such price list. The Current price list is set out in Schedule 3.
- 11.3. The License Royalty and the Support Royalty shall be payable by the Distributor to the Company in cleared funds not later than the [NUMBER] day of the calendar month following receipt of the relevant license fee or annual support charge from a licensee by the Distributor. If for any reason the Distributor received payment in part only then part payment proportional thereto shall likewise be made by the Distributor to the Company. All payments shall be made in [pounds sterling].
- 11.4. The Distributor shall be free to fix its own license fees and annual support charges: licensees in respect of each End-User Agreement and any additional delivery, implementation and training fees.
- 11.5. At the time of each payment of the License Royalty the Distributor shall supply the Company with one executed original of each of the End-User Agreement to which the payment relates.
- 11.6. The Distributor shall keep and shall make available to the Company on request accurate records to enable the Company to verify all royalty payments due to it.
- 11.7. During the term of this Agreement and for a period thereafter during which royalties shall continue to accrue and upon [NUMBER] business days' prior written notice, the Company shall have the right, during the Distributor's normal business hours, to send an independent accountant (not generally providing services to the Company except in respect of other royalty audits) to audit the records of the Distributor relating to the sub-licensing and support of the Software and to verify the royalty payments due to the Company. The Distributor shall give such accountant full access to the relevant records. The Company shall use its reasonable endeavors to procure that such accountant shall keep such information confidential (and to enter into any confidentiality undertaking reasonably requested by the Distributor in respect thereof prior to any disclosure) except that the accountant shall be entitled to reveal to the Company any information necessary to provide the Company with confirmation of the accuracy of the Distributor's royalty remittances or any deviations therefrom.

- 11.8. Any such audit shall be carried out at the Company's expense unless it reveals a deficiency of [PERCENTAGE %] or more of the royalties remitted for the period since the last most recent audit or, if none, the date of this Agreement in which event the Distributor shall pay the costs thereof. Payment of such costs and any royalty deficiency shall be made by the Distributor within [NUMBER] days after the Distributor shall have received written notice thereof from the Company together with a copy of the accountant's report and fee note showing the amounts due. Any such deficiency shall carry interest in accordance with sub-paragraph 8.3 from the date it was originally due.
- 11.9. If the Distributor fails to make any payment to the Company under this Agreement on the due date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:
- 11.9.1. suspend the performance or further performance of its obligations under this Agreement without liability to the Distributor;
 - 11.9.2. suspend (by notice in writing) the Distributor's right to enter into any further End-User Agreements until payment in full is made (and the Distributor shall so comply with such suspension); and
 - 11.9.3. charge the Distributor interest (both before and after any judgment) on the amount outstanding on a daily basis at the rate of [PERCENTAGE %] per annum above the base rate of [PERCENTAGE %] (or such other Bank as the Company may nominate) from time to time in force, such interest to be calculated from the date or last date of payment thereof to the date of actual payment (both dates inclusive) compounded quarterly. Such interest shall be payable on demand by the Company;
- 11.10. All royalties under this Agreement are exclusive of any Value Added Tax and other applicable sales taxes, which the Customer shall be additionally liable to pay to the Company.
- 11.11. The provisions of this Section shall survive the termination of this Agreement.

12. PROPERTY RIGHTS

- 12.1. The Software Materials and the Source Materials relating to the Software and the intellectual property rights therein or relating thereto are and shall remain the property of the Company and all copies thereof in the Distributor's possession, custody or control shall (to the extent that they are not exhausted by proper use) be returned to the Company or otherwise disposed of by the Distributor as the Company may from time direct.
- 12.2. The Distributor shall notify the Company immediately if the Distributor becomes aware of any unauthorized use of any of the Software Materials or the Source Materials relating to the Software or any of the intellectual property rights therein or relating thereto and will assist the Company (at the Company's expense) in taking all steps to defend the Company's rights therein.
- 12.3. The Distributor shall not use, reproduce or deal in the Software Materials or the Source Materials relating to the Software or any copies thereof except as expressly permitted by this Agreement.
- 12.4. The provisions of this Section shall survive the termination of this Agreement.

13. CONFIDENTIALITY

- 13.1. The Distributor shall not use or divulge or communicate to any person (other than as permitted by this Agreement or with the written authority of the Company):
- 13.1.1. any confidential information concerning the products, customers, business, accounts, finance or contractual arrangements or other dealings, transactions or affairs of the Company [and its subsidiaries] which may come to the Distributor's knowledge during the continuance of this Agreement;
 - 13.1.2. the Software Materials or any information concerning the same;
 - 13.1.3. the Source Materials relating to the Software; or
 - 13.1.4. any of the terms of this Agreement;
- and the Distributor shall use its best endeavours to prevent the unauthorized publication or disclosure of any such information, materials or documents.
- 13.2. The Distributor shall ensure that its employees are aware of and comply with the confidentiality and non-disclosure provisions contained in this Section and the Distributor shall indemnify the Company against any loss or damage which the Company may sustain or incur as a result of any breach of confidence by any of its employees.
- 13.3. If the Distributor becomes aware of any breach of confidence by any of its employees it shall promptly notify the Company and give the Company all reasonable assistance in connection with any proceedings which the Company may institute against any such employees.
- 13.4. The provisions of this Section shall survive the termination of this Agreement but the restrictions contained in sub-paragraph 13.1 shall cease to apply to any information which may come into the public domain otherwise than through unauthorized disclosure by the Distributor or its employees.

14. RESERVATION OF RIGHTS

The Company reserves the right:

- 14.1. to exploit the Software itself in the Territory by such means as it may think fit including, without limitation, by the appointment of other distributors;
- 14.2. to modify, enhance, replace or make additions to the Software in any way whatsoever as the Company may in its discretion determine;
- 14.3. to discontinue licensing or sub-licensing the Software in the Territory (whereupon this Agreement shall automatically terminate); and
- 14.4. to require the Distributor either not to use or to cease to use any advertising or promotional materials in respect of the Software which the Company considers not to be in the Company's best interest.

15. CUSTOMER ENQUIRIES

- 15.1. The Distributor shall promptly forward to the Company any enquiries it may receive for the Software from persons situated outside the Territory.
- 15.2. The Company shall not enter into any agreement for the licensing and support of the Software with any prospective licensee situated in the Territory in which the Distributor has established an recorded its interest unless the Distributor fails to enter into an End-User Agreement with that prospective licensee within a reasonable time thereafter.
- 15.3. The Company may if it wishes (but without being under any obligation so to do) refer to the Distributor any enquiry for the Software it may receive direct from a potential licensee situated in the Territory.

16. LEGAL RELATIONSHIP

- 16.1. During the continuance of this Agreement the Distributor shall be entitled to use the title "AUTHORISED SOFTWARE DISTRIBUTOR" but such use shall be in accordance with the Company's policies in effect from time to time and before using such title (whether on the Distributor's business stationary, advertising material or elsewhere) the Distributor shall submit to the Company proof prints and such other details as the Company may require and the Company may in its discretion grant or withhold permission for such proposed use.
- 16.2. Nothing in this Agreement shall render the Distributor a partner or (except as expressly permitted by this Agreement) an agent of the Company and the Distributor shall not (except as expressly permitted or contemplated by this Agreement) purport to undertake any obligations on the Company's behalf nor expose the Company to any liability nor pledge or purport to pledge the Company's credit.
- 16.3. The Distributor is hereby authorized to act as the Company's agent to execute on the Company's behalf each End-User Agreement which the Distributor is permitted to enter into pursuant to this Agreement and shall so execute each such End-User Agreement.

17. TERMINATION

- 17.1. Notwithstanding anything else contained herein, this Agreement may be terminated:
 - 17.1.1. by the Company forthwith on giving notice in writing to the Distributor if:
 - (a) the Distributor shall (or shall threaten to) sell, assign, part with or cease to carry on its business or that part of its business relating to the distribution of the Software;
 - (b) the control of the Distributor shall be transferred to any person or persons other than the person or persons in control of the Distributor at the date hereof (but the Company shall only be entitled to terminate within the period of [NUMBER] days after the Company shall have been notified in writing of the change in control);
 - (c) the Distributor shall fail to remit to the Company in any Year royalties equal to or in excess of the royalty targets set out in Schedule 4 or such other targets as may be agreed between the Company and the Distributor from time to time; or
 - 17.1.2. by either party forthwith on giving notice in writing to the other if:

- (a) the other commits any material or persistent breach of any term of this Agreement and (in the case of a breach capable of being remedied) shall have failed, within [NUMBER] days after the receipt of a request in writing from the other party so to do, to remedy the breach (such request to contain a warning of such party's intention to terminate);
 - (b) the other party shall have been unable to perform its obligations hereunder for a period of [NUMBER] consecutive days or for periods aggregating [NUMBER] days in any Year (but the party entitled to terminate may only terminate within the period of [NUMBER] days after the expiration of the said consecutive period or Year); or
 - (c) the other party shall have a receiver or administrative receiver appointed of it or over any part of its undertaking or assets or shall pass a resolution of winding up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction shall make an order to that effect or if the other party shall enter into any voluntary arrangement with its creditors or shall become subject to an administration order.
- 17.2. The Distributor shall not be entitled to any compensation (whether for loss of distribution rights, goodwill or otherwise) as a result of the termination of this Agreement in accordance with its terms.

18. EFFECT OF TERMINATION

On the termination of this Agreement

- 18.1. all rights and obligations of the parties under this Agreement shall automatically terminate except:
- 18.1.1. for such rights of action as shall have accrued prior to such termination and any obligations which expressly or by implication are intended to come into or continue in force on or after such termination;
 - 18.1.2. that the terms of this Agreement shall remain in full force and effect to the extent and for the period necessary to permit the Distributor properly to perform its continuing obligations under each End-User Agreement subsisting at the date of termination (and the Distributor's obligations under sub-paragraphs 18.3 and 18.4 below shall be deferred during such period as those continuing obligations subsist);
 - 18.1.3. that the obligations of the parties contained in paragraphs 4.9, 4.10 and 4.14 shall continue in respect of each End-User Agreement subsisting at the date of termination;
- 18.2. the Distributor shall immediately eliminate from all its literature, business stationery, publications, notices and advertisements all references to the title "AUTHORISED SOFTWARE DISTRIBUTOR" and all other representations of the Distributor's appointment hereunder;
- 18.3. the Distributor shall at its own expense forthwith return to the Company or otherwise dispose of as the Company may instruct all promotional materials and other documents and papers whatsoever sent to the Distributor and relating to the business of the Company (other than correspondence between the parties), all property of the Company and all copies of the Software Materials and the Source Materials relating to the Software, being in each case in the Distributor's possession or under its control;
- 18.4. the Distributor shall cause the Software to be erased from all computers of or under the control of the Distributor and shall certify to the Company that the same has been done; and

- 18.5. each End-User Agreement then subsisting shall continue in effect and shall survive the termination of this Agreement.

19. NOVATION OF END-USER AGREEMENTS

If the Company novates an End-User Agreement in favor of itself or another distributor in accordance with its entitlement thereunder, the Distributor shall:

- 19.1. give the Company or such distributor, at the Company's request, all reasonable cooperation in transferring the Distributor's obligations under such End-User Agreement to the Company or such distributor; and
- 19.2. forthwith pay to the Company or as it shall direct a proportionate part of any annual support fee (including taxes) paid in advance by the licensee thereunder apportioned from the effective date of the novation down to the expiry of the year to which the payment relates.

20. WAIVER OF REMEDIES

No forbearance, delay or indulgence by either party in enforcing the provisions of this Agreement shall prejudice or restrict the rights of that party nor shall any waiver of its rights operate as a waiver of any subsequent breach and no right, power or remedy herein conferred upon or reserved for either party is exclusive of any other right, power or remedy available to that party and each such right, power or remedy shall be cumulative.

21. INDEMNITIES

- 21.1. The Company shall indemnify the Distributor against any claim (or claim for indemnity from any licensee against a claim) that the normal use or possession of the Software Materials infringes the intellectual property rights of any third party provided that the Company is given immediate and complete control of such claim, that the Distributor does not prejudice the Company's defense of such claim, that the Distributor gives the Company all reasonable assistance with such claim and that the claim does not arise as a result of the use of the Software Materials otherwise than in accordance with the terms of this Agreement or an End-User Agreement or with any equipment or programs not approved by the Company. The Company shall have the right to replace or change all or any part of the Software Materials in order to avoid any infringement. The foregoing states the entire liability of the Company to the Distributor of the infringement of the intellectual property rights of any third party.
- 21.2. The Company shall indemnify the Distributor against any claim, loss, liability, damage or expense resulting from or due to a claim for breach of warranty, design defect, negligence or product liability or any similar claim directly attributable to the Software Materials save to the extent that such claim arises as a result of the Distributor's negligence, recklessness or willful misconduct or any breach of its obligations under this Agreement or any End-User Agreement and provided that the Company is given immediate and complete control of such claim, that the Distributor does not prejudice the Company's defense of such claim and that the Distributor gives the Company all reasonable assistance with such claim.
- 21.3. The Distributor shall indemnify the Company and keep the Company fully and effectively indemnified on demand from and against any and all losses, claims, damages, costs, charges, expenses, liabilities, demands, proceedings and actions which the Company may sustain or incur, or which may be brought or established against it by any person and which in any case arise out of or in relation to or by reason of:

- 21.3.1. any breach by the Distributor of its obligations under this Agreement; or
- 21.3.2. any unauthorized action or omission of the Distributor or its employees; or
- 21.3.3. the manner in which the Distributor markets the Software; or
- 21.3.4. the independent supply by the Distributor of any products or services for use in conjunction with or in relation to the Software;

OR

If any claim is made against the Company for which indemnification is sought under this Section, the Company shall consult with the Distributor and, subject to being secured to its reasonable satisfaction, shall co-operate with the Distributor in relation to any reasonable request made by the Distributor in respect of such claim.

22. WARRANTIES AND LIABILITY

- 22.1. The Company warrants to the Distributor that the Software, when delivered to the Distributor, shall provide, if properly used by the Distributor and licensees, the facilities and functions described in the Product Description and the Program Documentation. The Distributor acknowledges that the Software is of such complexity that it may have certain defects when delivered, and the Distributor agrees that the Company's sole liability and the Distributor's sole remedy in respect of any breach of the said warranty shall be for the Company to provide corrections of documented program errors in accordance with paragraph 7.2. If the Company fails (other than through the act or default of the Distributor) within a reasonable time to correct non-conforming Software as aforesaid its liability therefore shall be limited to a sum equal to the total royalties received by the Company from the Distributor pursuant to this Agreement.
- 22.2. The express terms of this Agreement are in lieu of all warranties, conditions, terms, undertakings and obligations implied by statute, law, custom, trade usage, course of dealing or otherwise, all of which are hereby excluded to the fullest extent permitted by law.
- 22.3. Notwithstanding anything else contained in this Agreement but subject to sub-paragraph 22.4, the Company shall not be liable to the Distributor for loss (whether direct or indirect) of profits, business or anticipated savings or for any indirect or consequential loss or damage whatsoever even if the Company shall have been advised of the possibility thereof and whether arising from negligence, breach of contract or howsoever.
- 22.4. The Company does not exclude liability for death or personal injury caused by the Company's negligence.
- 22.5. [The Company shall have no liability or responsibility whatsoever under paragraphs 21.1 or 21.2 or sub-paragraph 22.1 or otherwise under this Agreement for any Distributor Modifications].

23. FORCE MAJEURE

Neither party shall be liable for any delay in performing any of its obligations under this Agreement if such delay is caused by circumstances beyond the reasonable control of the party so delaying and such party shall be entitled (subject to giving the other party full particulars of the circumstances in question and to using its best endeavours to resume full performance without avoidable delay) to a reasonable extension of time for the performance of such obligations.

24. NOTICES

All notices which are required to be given hereunder shall be in writing and shall be sent to the address of the recipient set out in this Agreement or such other address in [COUNTRY] as the recipient may designate by notice given in accordance with the provisions of this paragraph. Any such notice may be delivered personally or by first class pre-paid letter telex or facsimile transmission and shall be deemed to have been served if by hand when delivered, if by first class post [NUMBER] hours after posting and if by telex or facsimile transmission when dispatched.

25. INTERPRETATION

In this Agreement:

- 25.1. reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended, extended or re-enacted;
- 25.2. words importing the singular include the plural, words importing any gender include every gender, words importing persons include bodies corporate and unincorporated; and (in each case) vice versa;
- 25.3. the headings to the paragraphs are for ease of reference only and shall not affect the interpretation or construction of this Agreement.

26. GENERAL

This Agreement constitutes the entire understanding between the parties concerning the subject matter of this Agreement and shall be effective unless made by a written instrument signed by both parties. Each provision of this Agreement shall be construed separately and notwithstanding that any such provision may prove to be illegal or unenforceable the remaining provisions of this Agreement shall continue in full force and effect.

IN WITNESS WHEREOF, each party to this agreement has caused it to be executed at [PLACE OF EXECUTION] on the date indicated above.

COMPANY

DISTRIBUTOR

Authorized Signature

Authorized Signature

Print Name and Title

Print Name and Title