
Wave Software Distribution Terms

Release 0.0.1

Author(s): Siôn H. Buckler, Wave

Feb 08, 2019

CONTENTS

1	Release Notes and Notices	2
1.1	Version 0.0.1	2
1.2	Known and Corrected Issues	2
1.3	Recently Updated Topics	3
2	Background	4
3	Definitions	5
3.1	Documentation	5
3.2	End User	5
3.3	Executable Code	5
3.4	Fees	5
3.5	Marks	5
3.6	Master Copy	6
3.7	Module	6
3.8	Products	6
3.9	Proprietary Notices	6
3.10	Registered End Users	6
3.11	Seat	6
3.12	Server	6
3.13	Services	6
3.14	Software	7
3.15	Source Code	7
3.16	Term	7
3.17	Region	7
4	Grant of Non-Exclusive Right & Licence	8
4.1	Grant of Licence	8
4.2	Special Permission(s) Request Process	8
4.3	Reservation of Rights	9
5	Maintenance Services	10
5.1	New Releases	10
5.2	Error Correction	10
5.3	Help Desk	10
5.4	Company Support	11
6	Additional Responsibilities	12
6.1	Delivery of Products	12
6.2	Training Services	12
6.3	Additional Services	12

7	Licence Fees & Payment	13
7.1	Licence Fee	13
7.2	Timing of Payments	13
7.3	Audit	13
7.4	Expense	13
7.5	Delinquent Accounts	14
7.6	Payment in Great British Pound Sterling (GBP)	14
7.7	Taxes	14
8	Distribution and Packaging	15
8.1	Generally	15
8.2	End User	15
8.3	Alpha/ Beta Releases	16
9	Compliance with Laws	17
10	Additional Responsibilities of Distributor	18
10.1	Annual Status Report	18
10.2	Annual Marketing Information	18
10.3	Travel and Related Expenses	18
10.4	Distributor Employees	19
10.5	End User Support	19
10.6	Product Implementation	19
10.7	Contact with End User	19
10.8	End User Responses	19
10.9	Company Technology	19
11	Ownership	21
12	Trademarks	22
12.1	Ownership	22
12.2	Use of Marks	22
12.3	Notice of Infringements	22
12.4	Distributors Trademarks	22
13	Non Disclosure & Confidentiality	24
13.1	Disclosure	24
13.2	Requirement of Confidentiality	24
13.3	Security Measures	25
14	Equitable Remedies & Specific Performance	26
15	Warranties	27
15.1	Warranties of Company	27
15.2	Warranties of Distributor	27
16	Indemnification Generally	29
16.1	Company Indemnification	29
16.2	Distributor Indemnification	29
17	Term & Termination	31
17.1	Term	31
17.2	Early Termination	31
17.3	Termination of Rights to Distribute in Certain Countries	31
17.4	Obligations upon Termination	32
17.5	Survival of Terms	32

18 Arbitration	33
19 Limitation of Liability	34
20 Miscellaneous	35
20.1 Entire Agreement; Amendments	35
20.2 Applicable Law	35
20.3 Relationship of Parties	35
20.4 Assignment	35
20.5 Waiver	36
20.6 Notice	36
20.7 Force Majeure	36
20.8 Headings	36
20.9 Severability	36
20.10 Appendixes	36
21 Source Code Escrow	38
21.1 Escrow Election	38
21.2 Escrow Desposit	38
21.3 Release Conditions	38
21.4 Event of Default	38
21.5 Ongoing Obligations	39
21.6 Escrow Fees	39
22 APPENDIX A – Description of Software	40
22.1 Introduction (Laymens Terms)	40
22.2 Technical Description (Summary)	41
23 Document Author(s):	42
23.1 Siôn H. Buckler	42

For Service Centers, Resellers & Installers. These terms and conditions are for Authorised, Licenced and/or Official re-distributors of the Wave® Operating System (WaveOS™).

If you or your organisation wish to become a Certified and/or Licenced Distributor for WaveOS™, please visit this link to submit your registration: <https://makeitwave.com/distributor-info.html>

This document may also be used as a guide for any entity wishing to share or re-distribute this software freely, without consequence or making themselves known to, or affiliating with Wave®.

RELEASE NOTES AND NOTICES

This section provides information about what is new or changed, including urgent issues, Software & documentation updates, maintenance and new releases.

- ‘Updates’ are the term used to describe significant changes to our public source code. These technical documents are now contained within our public source code.

1.1 Version 0.0.1

This is the first release/ draft of this technical document.

1.1.1 Older Versions

There are no older versions of this document, however a table has been made so that enteries can be made. We’re also still exploring how exactly we will make links to the older versions possible. Perhaps a PDF snapshot will do, before the directory is overwritten with the next version. The sphinx methodology is new to our team, we’re still exploring this and other options for maintaining technical documents for this project:

Table 1: Table 1.0 - Older Versions of this Document

archive date	version	description	download link
no date	0.0.0	N/A	N/A

1.1.2 Version 0.0.0

N/A

1.2 Known and Corrected Issues

Below is a table of pending issues which have been reported to our team. These issues will be cleared from this list as and when they are remedied.

Table 2: Table 1.1 - Known Issues

date	version	subject	description
01-11-2018	0.0.1	N/A	no doubt many issues to report - first draft only

Comments - none

1.3 Recently Updated Topics

Nothing significant to report

BACKGROUND

Make it Wave Ltd, hereinafter 'Company', is the software owner and has a right to license to others, certain computer software programs and related documentation. Distributor desires a nonexclusive, nontransferable, non-assignable and limited right and license to reproduce, market, and distribute such products within distributors country of origin, and Company agrees to grant to Distributor such right and license solely as set forth herein.

Now, therefore, in consideration of the mutual covenants hereinafter set forth, the receipt and sufficiency of which is hereby acknowledged, Company and Distributor, intending to be legally bound, hereby agrees to the terms set forth in this Software Distribution Licence Agreement Document.

DEFINITIONS

As used in this Agreement, and in addition to any other terms defined in this Agreement, the following terms shall have the following meanings:

3.1 Documentation

Means the documentation of the Software prepared by Company for use by End Users.

3.2 End User

Means an entity permitted to use one or more Products under an End User Agreement, incorporating the terms and conditions required to be referenced as set forth in this Agreement, for the End User's internal use only and without the further right to sublicense, distribute, transfer or transmit the Products.

3.3 Executable Code

Means a series of one or more instructions executable after suitable processing by a computer or other programmable machine, without compilation or assembly.

3.4 Fees

Mean the License Fees (referenced in Section 5.1), the fees for Training Services (referenced in Section 4.2 and Appendix E), and the fees for Additional Services (referenced in Section 4.3).

3.5 Marks

Means the trademarks, service marks, or trade names of Company associated with the Products as designated by Company.

3.6 Master Copy

Means a master copy/branch of the Software on any form of media and a master copy/branch of the Documentation either on Github, magnetic media or in hard copy as determined in the reasonable discretion of Company.

3.7 Module

Means a functionally separable component of the Software.

3.8 Products

Means the Software and its associated Documentation.

3.9 Proprietary Notices

Means any and all proprietary rights notices designated by Company, including, but not limited to, copyright notices affixed or included by Company on or in Association with the Products, including such notices as are set forth on the Master Copy

3.10 Registered End Users

Means those prospective End Users who are accepted by Company as Registered End Users in accordance with Section 2.2.

3.11 Seat

Means, for each Module of each item of Software, a workstation, whether a dumb terminal or containing a single CPU, that has or is capable of having simultaneous access to the client or terminal Module of such Software.

3.12 Server

Means a single CPU that can access through its registers addressable memory (such as RAM, main memory, extended memory, expanded memory, or virtual memory) that has or is capable of copying the server Module of Software into such memory.

3.13 Services

Mean the Maintenance Services, Training Services, Additional Services, and all other services to be provided by Company to Distributor under this Agreement.

3.14 Software

Means the computer software, in Executable Code only, that is included within the scope of this Agreement as listed in the attached Appendix A, as such schedule may be amended from time to time by the mutual agreement of Company and Distributor, and as such computer software may be enhanced, upgraded, or otherwise modified from time to time by Company.

3.15 Source Code

means a series of instructions or statements in an English-like high-level computer language, such as C, C++, C#, HTML, CSS and/or JAVA etc that is normally transformed by an interpreter or compiler into machine-readable Executable Code for actual use on a computer.

3.16 Term

Means the Initial Term and each Renewal Term.

3.17 Region

Means the client locations where Distributor has deployed Company Software.

GRANT OF NON-EXCLUSIVE RIGHT & LICENCE

4.1 Grant of Licence

Subject to the terms and conditions of this Agreement, Company grants to Distributor, and Distributor accepts, the following rights and licenses:

1. A transactional, nontransferable, nonexclusive right and license to sublicense the Products to Registered End Users for use on computers located in the Region, for such Registered End User's internal use only and without the further right to sublicense, distribute, transfer or transmit the Products;
2. A nontransferable, nonexclusive right and license to reproduce copies of the Products from the Master Copy for distribution only to End Users in accordance with subsection (a) above;
- (c) A nontransferable, nonexclusive right and license to use the Demonstration Beta Copies for the sole purposes of (i) demonstrating the features and functionality of the Products to Registered End Users, (ii) providing training to End Users, and (iii) providing Product support to End Users;
4. A nontransferable, nonexclusive right and license to use the Marks in conjunction with the licenses granted to Distributor in subsections (a), (b), and (c) above.

4.2 Special Permission(s) Request Process

1. In the event that Distributor desires to alter the Product or Product Marketing e.g. brand, source code etc, where it is for themselves, associates and/or End User(s), then Distributor shall deliver to Company a Special Permissions Request (a "Request Form"). The Request shall contain such information as Company may reasonably require from time to time in Company's sole discretion. Company's current Request For Quote is simply an email, addressed to info@makeitwave.com . The effective date of the Request (the "Special Permissions Request Registration Effective Date") shall be the date of the Request Notice, except as provided in the following sentence. In the event that Company does not respond to a Request from Distributor within 15 business days after receipt of a Request email, then the person or entity designated on such Request shall be deemed authorised and permitted, and the Registration Effective Date shall be the 16th day after the date of receipt by Company of such Request.
2. Company agrees that so long as a person or entity remains a Registered End User from the labours of the Distributor, while this agreement is active, Company shall not unreasonably interfere with the relationship between the Distributor and Registered End User unless invited by either party. Both parties to this agreement acknowledge that Company intends, without any obligation of Company to Distributor whatsoever, to provide similar registration procedures and limitations with Company's other distributors, in order to prevent unnecessary bias or confusão. Nothing contained in this Agreement shall be deemed to create any obligation on the part of Company to limit the marketing rights of any other Distributor or to create any third party rights in Distributor to enforce the terms and conditions of any agreement between Company and any third party distributor.

3. Distributor acknowledges and agrees that Company may establish requirements for prospective End Users to be granted Registered End User status and may deny Registered End User status to any prospective End User for any reason, including, without limitation, the previous granting of Registered End User status of such prospective End User to another distributor or Company's intentions to market to such prospective End User directly. Company will document and provide to Distributor the reason for business conflict. Company associates with regards development of the Product, may also do the same if they feel an End User is abusing their application and/or service contained within the Company's Product.

4.3 Reservation of Rights

Company reserves all rights not expressly granted herein, including but not limited to the rights to market the Products either directly or through distributors and/or third parties. Except as set forth in the Agreement, no express or implied license or right of any kind is granted to Distributor regarding the Products or the Marks, including, but not limited to, any right to know, use, produce, receive, reproduce, copy, market, sell, distribute, transfer, translate, modify, adapt, disassemble, decompile, or reverse engineer the Products or create derivative works based on the Products or any portions thereof, or obtain possession of any source code or other technical material relating to the Products.

MAINTENANCE SERVICES

Company shall provide to Distributor the “Maintenance Services” described in this Section 3.

5.1 New Releases

Company shall make available to Distributor all new releases and versions of the Product promptly upon completion thereof, including all modifications, error fixes, and associated documentation. Nothing contained herein, however, shall require Company to create any new releases and/or versions of the Product unless otherwise expressly set forth in this Agreement.

5.2 Error Correction

Company agrees that Company will use reasonable commercial efforts to correct all verifiable and reproducible “Errors”. For the purposes of this Agreement, “Error” means a substantial failure of the Software to conform to the material functional specifications contained within the Documentation, and “Error Correction” means either a software modification or addition in Executable Code that when made or added to the Software, establishes material conformity of the Software to the material functional specifications contained within the Documentation, or a procedure or routine that, when included in the regular operation of the Software, eliminates the practical adverse effect on the End User of such nonconformity. Upon delivery of an Error Correction to Distributor, such Error Correction shall be considered to be a part of the Software. Within a reasonable period of time after verifying that such an Error is present, Company shall initiate work in a diligent manner toward development of an Error Correction. Company shall not be responsible for correcting Errors resulting from misuse, negligence, revision, modification, or use of the Software or any portion thereof by Distributor, any End User, or any other person or entity that is not in accordance with the license restrictions. Distributor shall promptly notify Company of all reported Errors encountered by Distributor or to the extent known by Distributor, any End User in using the Software.

5.3 Help Desk

Company agrees that Company will provide telephone, email and website ticket support to Distributor to report problems in the use of the Products and to seek assistance with regard to such problems during Company’s normal business hours from 9:00 am to 6:00 pm GMT, as the case may be, weekends and bank holidays excepted. In no event shall Distributor provide access to such telephone support to End Users or in any way refer such parties to Company prior to obtaining the written consent of Company.

5.4 Company Support

Distributor may utilize web based, email and/or telephone based support for any Company issued Software and/or Product(s). Company's support personnel shall be trained and qualified to resolve Software problems. Company's support personnel will provide remote services, whereby Company will be able to access to Distributor's and End User(s) systems and provide the necessary assistance related to Distributor's and/or End Users use of Software. During standard business hours of 9:00 AM thru 6:00 PM GMT, except holidays, Company's staff shall acknowledge to Distributor its reported problem or issue (collectively a "Problem") within 24 hours of Distributor's reporting to Company of any such Problem, that Distributor has experienced, and provide Distributor an estimated time to resolve or remedy such Problem. Any Problem, which is acknowledged but not remedied within 10 working days of Distributor's reporting to Company, shall be escalated to Company's senior management.

ADDITIONAL RESPONSIBILITIES

6.1 Delivery of Products

Within a reasonable time after the Effective Date, Company shall provide to Distributor one (1) link, to obtain by download, a Copy of the latest Master Branch of the Software, fully compiled for immediate use by Distributor and/or End User(s) as set forth in this Agreement.

6.2 Training Services

Company shall provide to Distributor those training services more particularly described on Appendix E (the “Training Services”) and for the charges, if any, described therein.

6.3 Additional Services

At Distributor’s request, Company will provide Distributor with consulting, programming, and technical services related to the Products, including services for customization and adaptation (collectively, the “Additional Services”). Except for Additional Services that impact Distributor’s ability to meet a Service Level Agreement with an End User Client which shall be provided as stated in Section 3.4 of this agreement, Additional Services shall be provided based upon the availability of qualified Company personnel and shall be subject to mutually agreed rates on a case by case basis. All out of pocket expenses, including travel, food, and lodging, shall be reimbursed by Distributor subject to and in accordance with Distributor Travel and Expense policy.

LICENCE FEES & PAYMENT

7.1 Licence Fee

Distributor shall pay to Company, through way of application and registration. Following this contract signing and payment, this agreement will be binding for a period of 3 years. After which point the prospective Distributor will become, in full effect, a Licenced Distributor of the Companies Software and/or Products and Services, with Permission, as set forth in this agreement, to distribute, with wholesale support of the developers, the Companies Software and/or Product(s), as set forth herein ("Transactional License Fee").

7.2 Timing of Payments

The Transactional License Fee shall be due and payable on or before the prospective Distributors application and registration

7.3 Audit

Distributor shall keep complete and accurate records of Distribution, to allow Company to examine and audit Distributor's accounts of distribution, for cross reference with autonomous data collection and assurance obligations under this Agreement are being met. Distributor agrees to permit Company or, at its option, a certified public auditor paid by Company, to inspect such records at reasonable times during normal business hours. In the event such audit discloses discrepancies, then Distributor shall immediately share running costs of further investigation and identify the source of the discrepancies. Any third party auditors or accountants used under this Section shall not be Distributor/ Company competitors and must execute a non-disclosure agreement with Distributor and Company that is reasonably satisfactory to all parties.

7.4 Expense

Upon determination of investigation, liability of the costs will be reimbursed by the non-liable party to this Agreement e.g. if the investigation determines the Company's analytics of the Network of End Users are at fault, costs incurred by the Distributor will be reimbursed by the Company and vice versa will be expected. Such expenses shall include, without limitation, reasonable travel expenses (including transportation, lodging, and meals) and the cost of any courier services, photocopying, facsimile, transmissiôns, communications charges, telephone calls (excluding Company's costs for providing telephone support pursuant to Section 3), and other expenses. Reimbursement for expenses shall be due sixty (60) days after receipt of valid invoice from the agreed 3rd Party Auditor.

7.5 Delinquent Accounts

Interest may be charged by Company on delinquent payments and any other fees not paid to Company as provided hereunder at the Bank of England Interest Base Rate at the time or the amount stipulated by UK statutes, whichever is less, commencing with the date payment was due.

7.6 Payment in Great British Pound Sterling (GBP)

All payments from Distributor to Company hereunder shall be in British Pound Sterling and shall be made by means of a company check, bank cheque or wire transfer drawn on a British Crown Territory/ Realm bank to a British Crown Territory/ Realm bank account designated by Company.

7.7 Taxes

Distributor shall be responsible for applicable sales, use and similar transactional taxes, that Company is required to collect from Distributor under applicable law as a result of this Agreement. Company shall clearly and separately state any such applicable taxes on Company's invoice to Distributor for corresponding charges. Distributor shall pay applicable taxes on the invoice or, in lieu of the payment of any such taxes, Distributor may provide Company with a certificate acceptable to the taxing authorities exempting Distributor from payment of these taxes. Company, and not Distributor, shall be obligated to pay any applicable taxes not so invoiced to Distributor, including without limitation, any and all interest, penalties and solicitors' fees. Notwithstanding the foregoing, Company shall be responsible for the payment of any and all income taxes of Company. Each party agrees to cooperate with in submitting all applications, certificates, and other information necessary or reasonably requested by the other party to reduce or eliminate any and all income taxes and/or withholding taxes on all Fees.

DISTRIBUTION AND PACKAGING

8.1 Generally

Distributor shall reproduce the Products and distribute copies of the Products solely in accordance with the requirements below:

1. Upon reasonable notice from Company, Distributor agrees to permit Company access, not more often than once per year, during Distributor's normal business hours, to Distributor's facility where the distribution process is undertaken in order for Company to verify and audit Distributor's compliance with this Agreement. Such verification and audit shall be at Company's expense and may be performed, at Company's option, by an independent third party selected by Company that is not a competitor of Distributor and which party shall be bound to Distributor by reasonable obligations of confidentiality.
2. Distributor shall affix to each distribution reference to themselves and the Company for the End User. This leaflet template will be made downloadable from the Company website. Such Proprietary Notices shall be conspicuous, and Distributor shall not obscure or modify such Proprietary Notices.
3. Distributor shall submit to Company, prior to use, distribution, or disclosure, any advertising, promotion, marketing materials, and publicity proposed to be used by Distributor in its efforts to market the Products as set forth hereunder, or which is otherwise undertaken pursuant to this Agreement, which materials display any of the Marks (the "Marketing Materials"). Distributor may not use, distribute, or disclose the Marketing Materials referencing the Companies Brand or Product and/or Software unless approved by Company, which approval will not be unreasonably withheld or delayed. The Special Permissions Process should be used in such instances.
4. Distributor has and shall exercise no authority to make statements, warranties or representations concerning the Products that exceed or are inconsistent with the marketing materials and technical specifications provided to Distributor by Company. Distributor has and shall exercise no authority to bind Company to any undertaking or performance with respect to the Products.
5. Distributor shall determine End User Agreement(s) in accordance with the Company's Distributor Terms & Conditions and their own Products and Services as the Distributor sees fit.

8.2 End User

In connection with the distribution and licensing of the Products to End Users, and in addition to any other terms and conditions provided in this Agreement, Distributor shall also comply with the terms and conditions of this Section.

1. Upon request of the Company the Distributor must submit to Company all forms of End User agreement being used by Distributor in connection with the license of the Product to End Users (collectively, the "End User Agreements") for purposes of improvement of Company's growth and development of providing a foregoing, constantly improving, quality Product and Service. Under no circumstance will the Company disclose one Distributors End User Agreements with another of its Distributors.

2. Distributor shall enforce the terms of its End User Agreements with End Users and shall immediately inform Company of any known breach of such terms where it knowingly conflicts with the Company's best interests and/or terms of this agreement. If Distributor fails to enforce any of the material required terms of any their End User Agreement, where it serves of detriment to the Company: (i) Distributor may be considered to be in material breach of this Agreement; and (ii) Company shall have the right to enforce such End User Agreement as a third-party beneficiary, and upon Company's request, Distributor shall assign to Company any rights in the agreements that are necessary to enforce the terms of such agreements. The sole provision that Company require to be in any End User Agreement is only that Company is recognised as the source of its Product and Software (see Firefox Open-Source Code Licence). All End User Agreements concerning Company issued Software, assume the Company reserves all rights, but not obligation, of Distribution and sustained support of the Software upon a termination of this Agreement and/or liquidization of the Licenced Distributor. This right shall survive termination of this Agreement.
4. Distributor will defend, indemnify and hold harmless Company, including its respective subsidiaries, shareholders, directors, officers, employees and agents from and against any claims, causes of actions, obligations, liability, liens, judgments, damages, tortious interference, losses, costs, expenses and fees related to (i) personal injury (including death) and real or tangible personal property damages caused by the negligent or intentional acts of Distributor, its employees, shareholders, End Users or agents and (ii) Distributor's gross negligence or willful misconduct.
5. Company will defend, indemnify and hold harmless Distributor, including its respective subsidiaries, shareholders, directors, officers, employees and agents from and against any claims, causes of actions, obligations, liability, liens, judgments, damages, tortious interference, losses, costs, expenses and fees related to (i) personal injury (including death) and real or tangible personal property damages caused by the negligent or intentional acts of Company, its employees or agents and (ii) Company's gross negligence or willful misconduct.

8.3 Alpha/ Beta Releases

Distributor will control and limit or cause to be controlled and limited the use of the Beta Releases for the specific purposes authorized in Section 2.1. In the event that Distributor uses the Beta Releases on the computer system of a prospective End User, Distributor shall remain in the presence of such prospective End User at all times that any Beta Release is installed at the site of such prospective End User, and, upon completion of any demonstration, Distributor shall remove all Beta Releases from the computer system of such prospective End User and cause the deletion of all portions of the same from such computer. For the purposes of this Agreement, Beta Releases shall be considered Products.

COMPLIANCE WITH LAWS

1. Each party will comply with all applicable laws and regulations in the countries in which the Products are delivered relating in any way to its performance under this Agreement including, but not limited to, obtaining all necessary import licenses or permits and any other government approval necessary for the importation of the Products into such country. Each party will also comply with all applicable laws and regulations of such countries pertaining to the licensing, distribution, promotion, and marketing of the Products. Each party will defend, indemnify, and hold the other party, its subsidiaries and affiliated companies, and their respective officers, directors and agents, harmless from and against any and all damages and expenses, including legal fees, claimed by third parties directly or indirectly as a consequence of a party's failure to comply with any applicable laws or regulations. This obligation shall survive termination of this Agreement.
2. In exporting Products each party shall be solely responsible for its own compliance with all applicable British Crown software distribution and/or export laws, rules, and regulations. In distributing the Products, each party agrees to keep such books and records and to take such other actions, as may be required by applicable laws, rules, and regulations, and to comply with any British Crown Territory and/or Realm export laws, rules, and regulations applicable to such party. Company shall notify Distributor if any Products are export controlled or restricted and shall provide Distributor with any necessary export licenses.

ADDITIONAL RESPONSIBILITIES OF DISTRIBUTOR

Distributor will use its reasonable efforts in its sole discretion to market, license, and distribute the Product to potential End Users. Distributor agrees to promote the Products fairly and use good faith efforts to present the Products in a positive light to potential End Users. Distributor will also keep Company informed of any significant information relating to the marketing and distribution of the Products.

10.1 Annual Status Report

Distributor shall deliver to Company within twenty (20) days after the end of each calendar quarter during the Term, a written report summarizing the number of their Registered End Users, and any plans, suggestions for continued improvements of Registered End Users use of the Company Software.

10.2 Annual Marketing Information

In good faith, as an expectation, not obligation of this agreement, the Distributor must include issues, risks, concerns, ideas and opportunities concerning:

1. the market conditions relating to the Products, including current trends and forecasts;
2. Distributor's activities relating to the Products, including significant inquiries from potential Registered End Users;
3. information regarding existing or new competitors;
4. suggestions made by End Users or members of Distributor's sales force for enhancements; and
5. any knowledge of any infringements or attempted infringements by third parties of Company's or its licensors' trademarks or copyrights, of any disclosures or misappropriations of Company Proprietary Information, or any other infringements or misappropriation of any of Company's or its licensors' intellectual property rights.

10.3 Travel and Related Expenses

Distributor is responsible for its own costs and expenses of every kind, including travel and office expenses, relating to its duties hereunder.

10.4 Distributor Employees

Distributor will employ and train personnel to implement the Products at End Users' sites and to train End Users' personnel in the use of the Software.

10.5 End User Support

Distributor will provide prompt support services, including telephone support, to End Users. Distributor will be entitled to retain the support fees charged to End Users in compensation for such support services, subject to the requirements of remitting the Maintenance Fees. Company will provide to Distributor and Distributor will follow Company's technical procedures and other support policies in supporting the Products.

10.6 Product Implementation

Distributor will be responsible for installing and implementing the Software at End Users' sites. Distributor shall be entitled to retain all revenue received from End Users for such installation and implementation services, service & support, including training.

10.7 Contact with End User

Distributor will be responsible for all direct contact with End Users and Registered End Users, including but not limited to contact related to contract negotiations and implementing and supporting the Products. Notwithstanding the earlier termination or expiration of this Agreement for any reason, Distributor will be solely responsible for performing all support services in accordance with any contractual arrangement entered into with End Users during the entire term of such contracts, unless otherwise specified herein. End User license will remain valid separate from this Agreement. Termination of this Agreement will not result in the automatic termination of any End User license. Notwithstanding the termination of this Agreement for any reason, Distributor's rights to receive and provide support or as otherwise necessary to perform its obligation under any then – existing End User License shall continue until such time as those then-existing End User License agreements independently expire or terminate.

10.8 End User Responses

At Company's request, Distributor will promptly submit to Company a copy of any proposed or actual technical response to a request for proposal or request for tender that involves the distribution of Products to an End User hereunder. If Distributor provides such proposal materials to Company, Company shall be prohibited from bidding, directly or indirectly, against Distributor for such proposal. The sole purpose of such exercise will be for Company training and improvement through understanding of requests made by End Users for solutions where the Software may fulfill the requirement e.g. if a large number of End Users request a solution that does X & Y, and Software only does X, Company may be inclined to introduce Y to the Software. Distributor adherence to this clause will contribute to the identifying of opportunity lost for both parties of this agreement.

10.9 Company Technology

“Company Technology” shall mean software (whether in source, object, or executable code, as applicable) and documentation, including applications, programs, databases, operating systems, procedures, specifications, and other logic

that directs the functions or manipulates information for those products licensed by Company to Distributor or Distributor's End Users under this Agreement. Distributor agrees not to use Company's Confidential Information or Proprietary Information to develop any product that performs substantially the same business functions as Company Technology without written permission of Company.

OWNERSHIP

Company and its licensors expressly retain title and ownership to all worldwide intellectual property rights, including without limitation, design, trade secrets, know-how, patent rights, trademarks, and copyrights in and to the Software, Documentation, Source Code of the Software, and any modifications, adaptations, derivative works, and enhancements made thereto. Except as may be set forth in separate written agreements with regard to Software, Documentation, Source Code of the Software, and any modifications, adaptations, derivative works, and enhancements made thereto. Distributor hereby waives any claim that it may have had or has, as a result of this Agreement only, to title and ownership of intellectual property rights in and to the Software, Documentation, source code of the Software, and Company Proprietary Information (as defined in Section 11.1), and any modifications, adaptations, enhancements, or derivative works made by or under the direction of Company or Distributor.

TRADEMARKS

12.1 Ownership

Distributor acknowledges that Company and/or its licensors e.g. Google Inc awarded Patents, 3rd Party Applications and Source Code embedded within the Software, are the owners of all right, title and interest in and to the Marks, and Distributor will not adopt for use any of the Marks in any manner whatsoever except as expressly provided in this Agreement.

12.2 Use of Marks

In written communications and in advertising, Distributor's use of the Marks shall at all times be in accordance with such styles and together with such trademark notices as Company may require. Distributor agrees that this Agreement does not constitute any conveyance of any right, title or interest in or to any Marks, except for the permissive uses provided herein. At the request of Company, Distributor shall submit to Company any and all materials bearing or including any of the Marks, for prior review and approval by Company. Distributor agrees not to commit any acts, directly or indirectly, which contest, dispute, or otherwise impair the rights, title, or interest of Company in or to the Marks. Distributor agrees not to claim or assert any rights, title or interest in or to the Marks in any way. The parties agree that all uses of the Marks by Distributor shall be in such a manner as to inure at all times to the benefit of Company. Distributor shall not use any language or display any Marks in such a manner as to create the impression that the Marks belong to and are owned by Distributor. Upon the request of Company, Distributor agrees to discontinue the use of (i) any Marks being used by Distributor in a manner inconsistent with the guidelines set forth above, or (ii) any trademark, service mark, or trade name deemed to create a likelihood of confusion with a Mark.

12.3 Notice of Infringements

Distributor will promptly notify Company of any and all third party infringements or attempted infringements of any of the Marks that may come to Distributor's attention, and Distributor will assist Company in taking such action against the third party infringers as Company may elect in its sole discretion. Company will bear the expenses of Distributor's assistance to Company, as may be requested by Company, if the infringement or attempted infringement arises by virtue of Company's or a third party's act or omission.

12.4 Distributors Trademarks

While Distributor may use the Marks in connection with the marketing, licensing, and distribution of the Products, subject to the terms and conditions of this Agreement, Distributor is not obligated to use the Marks. Distributor may use its own trademarks to market, license, and distribute the Products, so long as all Proprietary Notices are

clearly affixed as required by Section 6.1(b) and all other requirements otherwise provided in this Agreement are met. Company may not use any trademarks, service marks, or trade names owned by Distributor, without the prior written permission of Distributor.

NON DISCLOSURE & CONFIDENTIALITY

13.1 Disclosure

Each party hereunder may disclose to the other party certain Trade Secrets and Confidential Information of such party or of such party's associated companies, suppliers, or customers. For purposes of this Agreement, "Trade Secrets" means information which: (a) derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy; "Confidential Information" means information, other than Trade Secrets, that is of value to its owner and is treated as confidential; "Proprietary Information" means Trade Secrets and Confidential Information; "Owner" refers to the party disclosing Proprietary Information hereunder, whether such party is Company or Distributor and whether such disclosure is directly from Owner or through Owner's employees or agents; and "Recipient" refers to the party receiving any Proprietary Information hereunder, whether such party is Company or Distributor and whether such disclosure received directly or through Recipient's employees or agents.

13.2 Requirement of Confidentiality

Recipient agrees to hold the Proprietary Information disclosed by Owner in confidence and not to, directly or indirectly, copy, reproduce, distribute, manufacture, duplicate, reveal, report, publish, disclose, cause to be disclosed, or otherwise transfer the Proprietary Information disclosed by Owner to any third party, or utilize the Proprietary Information disclosed by Owner for any purpose whatsoever other than as expressly contemplated by this Agreement. Recipient shall protect the disclosed Proprietary Information by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized disclosure of the Proprietary Information as Recipient uses to protect its own proprietary or confidential information of a like nature. With regard to the Trade Secrets, this obligation shall continue for so long as such information constitutes a trade secret under applicable law. With regard to the Confidential Information, this obligation shall continue for the Term and for a period of five (5) years thereafter. The foregoing obligations shall not apply if and to the extent that:

1. Recipient establishes that the information communicated was already known to Recipient, without obligations to keep such information confidential, at the time of Recipient's receipt from Owner, as evidenced by documents in the possession of Recipient prepared or received prior to disclosure of such information;
2. Recipient establishes that the information communicated was received by Recipient in good faith from a third party lawfully in possession thereof and having no obligation to keep such information confidential; or
3. Recipient establishes that the information communicated was publicly known at the time of Recipient's receipt from Owner or has become publicly known other than by a breach of this Agreement.

13.3 Security Measures

Without limiting the general obligations specified above in Section 11.2, Recipient agrees to implement the following security steps in order to protect the confidentiality and security of the Proprietary Information disclosed by Owner:

1. Implement internal procedures to limit, control and supervise the use of the Proprietary Information disclosed by Owner;
2. Make the Proprietary Information disclosed by Owner available only to employees of Recipient who have executed written confidentiality agreements with Recipient;
3. Notify Company by Email, Phone or writing of any suspected or known breach of the obligations and/or restrictions set forth in this Section 11; and
4. Use similar security procedures it uses for its own Proprietary Information, which it protects against unauthorized disclosure, appropriation or use, but not less than reasonable security procedures.

EQUITABLE REMEDIES & SPECIFIC PERFORMANCE

Both parties acknowledge that each provision in this Agreement providing for the protection of the other party's copy-rights, Proprietary Information and other proprietary rights is material to this Agreement. The parties acknowledge that any threatened or actual breach of a party's Proprietary Information, copyrights or other proprietary rights by the other party shall constitute immediate, irreparable harm to the first party, for which equitable remedies may be awarded by a court of competent jurisdiction.

WARRANTIES

15.1 Warranties of Company

1. Company warrants to Distributor that (i) Company has full authority to execute and perform this Agreement; (ii) this Agreement has been duly executed and delivered by Company and constitutes the legal, enforceable and binding obligation of Company; and (iii) Company's execution and performance of this Agreement will not violate any law or breach any other agreement.
2. Company warrants to Distributor that the Products will perform substantially in accordance with Company's Documentation. Distributor's sole and exclusive remedy for any breach of the foregoing warranty shall be, at Company's option, repair or replacement of the non-conforming software or a refund of the license fees related to the defective software. Company further warrants the Products will comply with all British Crown Territory and Realm laws, regulations, orders and decrees applicable to the healthcare industry; (b) the Products do not contain or transmit any malicious code (except for any malicious code contained in user-uploaded attachments or otherwise originating from users); (c) Company owns or otherwise has sufficient rights in the Products to grant to Distributor the rights to distribute and use the Products granted herein; (d) the Products do not infringe the copyrights, trade secrets patents or trademark rights of any third party; and (e) Company has not (i) incorporated Open Source Materials into, or combined Open Source Materials with, the Products, (ii) distributed Open Source Materials in conjunction with any Products or (iii) used Open Source Materials, in such a way that, with respect to the foregoing (i), (ii), or (iii), creates obligations for Company to grant, or purport to grant, to any third party, any rights or immunities with respect to the Products, including, but not limited to, any right to require that other material software included with, incorporated into, derived from or distributed with such Open Source Materials be (A) disclosed or distributed in source code form, (B) be licensed for the purpose of making derivative works, or (C) be redistributable at no charge.
3. OTHER THAN AS EXPRESSLY SET FORTH IN SECTION 13.1, Company DOES NOT MAKE ANY EXPRESS OR IMPLIED WARRANTIES TO Distributor, END USERS, OR ANY OTHER PERSONS OR ENTITIES WITH RESPECT TO THE PRODUCTS, ANY COPIES THEREOF, ANY SERVICES PROVIDED HEREUNDER OR OTHERWISE REGARDING THIS AGREEMENT, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTY OF MERCHANTABILITY, AND THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.

15.2 Warranties of Distributor

1. Distributor warrants to Company that (i) Distributor has full authority to execute and perform this Agreement; (ii) this Agreement has been duly executed and delivered by Distributor and constitutes the legal, enforceable and binding obligation of Distributor; (iii) Distributor's execution and performance of this Agreement will not violate any law or breach any other agreement; and (iv) no approval, action or authorization by any governmental authority or agency is required for Distributor's execution and performance hereof or, if it is, such approval, action or authorization has been obtained and written evidence thereof has been provided to Company.

2. OTHER THAN AS EXPRESSLY SET FORTH IN SECTION 13.2, Distributor DOES NOT MAKE ANY EXPRESS OR IMPLIED WARRANTIES TO COMPANY OR ANY OTHER PERSONS OR ENTITIES WITH RESPECT TO THE PRODUCTS, ANY COPIES THEREOF, ANY SERVICES PROVIDED HEREUNDER OR OTHERWISE REGARDING THIS AGREEMENT, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTY OF MERCHANTABILITY, AND THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.

INDEMNIFICATION GENERALLY

16.1 Company Indemnification

Company shall, except as otherwise provided below, indemnify, defend and hold harmless Distributor and its officers, directors and agents against any damages, costs, and fees resulting from:

1. any third party claims that the Software or any of its elements or the use thereof in accordance with its related Documentation has, will or does violate or infringe any copyright, trade secret, or other valid proprietary right of any other person or entity and
2. any failure on the part of Company to pay any taxes, duties or assessments Company is obligated to pay hereunder or other amounts Company is obligated to pay as set forth in Section 5.7. The right of indemnification as set forth herein will be subject to all of the following:
 1. Distributor providing Company with prompt written notice of the initial claim and filing of the lawsuit relating thereto;
 2. Distributor permitting Company to select legal counsel and to defend, compromise, or settle the lawsuit in the sole discretion of Company, except that Company shall have no authority to require Distributor to pay any amounts or admit to any wrong-doing;
 3. Distributor providing Company with all available information, assistance, authority, and cooperation to enable Company to defend, compromise, or settle the lawsuit as provided herein; and
 4. if the use of the Software becomes, or in Company's opinion is likely to become, the subject of a claim of infringement, Distributor permitting Company, at Company's option and expense, either to procure the right for Distributor and End Users to continue to use the Software or to replace or modify the Software so that it becomes non-infringing.

Company will have no liability for any infringement or misappropriation of any copyright, trade secrets, or other proprietary rights resulting from modification of the Software performed other than by Company, from use other than as specified under this Agreement and approved End User Agreement, and the related Documentation, or from the use of the Software with products not specifically approved in writing by Company for use with the Software. This Section 14 sets forth the exclusive remedy of Distributor against Company and the complete liability of Company with respect to any claim of infringement made against Distributor or any End User.

16.2 Distributor Indemnification

In addition to any other Distributor obligations of indemnity provided in this Agreement, Distributor agrees to indemnify, defend and hold harmless Company, its affiliates, and their directors, officers, shareholders, employees and agents from and against any liabilities, losses, damages, causes of action or injuries, together with costs and expenses, including reasonable attorneys' fees, resulting from any claim by unaffiliated third parties arising out of or resulting from:

1. Any failure on the part of Distributor to pay any taxes, duties or assessments Distributor is obligated to pay hereunder or other amounts Distributor is obligated to pay as set forth in Section 5.7; or
2. The infringement or claim thereof of any patent, copyright, trademark, service mark, trade name, trade secret, proprietary and confidential information right, or any other property right of a third party arising from the use by Distributor of any symbol, insignia, name or identifying characteristic identifying the Products other than a Mark.

If the use by Distributor of any symbol, insignia, name or identifying characteristic identifying the Products other than a Mark becomes, or in Distributor's opinion is likely to become, the subject of a claim of infringement under Section 14.2(b), Distributor shall, at Distributor's option and expense, either to procure the right for Distributor to continue to use the symbol, insignia, name or identifying characteristic or to replace or modify the symbol, insignia, name or identifying characteristic so that it becomes non-infringing. This Section 14.2 sets forth the exclusive remedy of Company against Distributor and the complete liability of Distributor with respect to any claim of infringement made against Company under Section 14.2(b).

The right of indemnification as set forth herein will be subject to all of the following:

1. Company providing Distributor with prompt written notice of the initial claim and filing of the lawsuit relating thereto;
2. Company permitting Distributor to select legal counsel and to defend, compromise, or settle the lawsuit in the sole discretion of Distributor; and
3. Company providing Distributor with all available information, assistance, authority, and cooperation to enable Distributor to defend, compromise, or settle the lawsuit as provided herein.

TERM & TERMINATION

17.1 Term

Unless earlier terminated as provided in this Section 15, this Agreement shall be effective as of the Effective Date and shall remain in effect until the first anniversary of the Effective Date (the “Initial Term”). This Agreement shall be automatically renewed for successive one-year periods (each such renewal term is referred to as a “Renewal Term”), subject to earlier termination as set forth in this Section 15, unless either party notifies the other on or before 90 days before the beginning of any Renewal Term.

17.2 Early Termination

Without prejudice to any other remedies, either party shall have the right at any time by giving notice to the other to terminate the Agreement forthwith in any of the following events:

1. if the other party commits a material breach of any of the terms or conditions of this Agreement and fails to cure such breach within 30 days after delivery of notice thereof; or
2. at a party’s option, if the other party becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits an appointment of a receiver for its business or assets, becomes subject to any proceedings under any bankruptcy or insolvency law, whether domestic or foreign, or is liquidated, voluntarily or otherwise; or
3. at a party’s option, if the other party sells all or a substantial part of its assets; or
4. if any substantial change takes place in the management, ownership or control of the other party resulting in the management, ownership or control of the other party by a competitor of the first party or by a company or other entity with a division or subsidiary that is a competitor of the first party.

17.3 Termination of Rights to Distribute in Certain Countries

In addition to any other rights and remedies available under this Agreement, at law or in equity, Company may terminate Distributor’s rights under this Agreement with respect to the right to market, license and distribute the Products in any country upon 30 days’ advance written notice in the event the government of such country

1. enacts currency control laws or regulations which make it impossible to export the Fees due to Company under this Agreement;
2. nationalizes Distributor; or
3. commits acts which Company, in its discretion, deems to be unreasonable and injurious to the Software or Documentation or this Agreement.

17.4 Obligations upon Termination

Upon expiration or termination of this Agreement for any reason, Distributor shall immediately return to Company all Company property, including, but not limited to, the Master Copy, the Demonstration Copies and the Proprietary Information of Company. Upon return of such materials, Distributor shall provide Company with a signed written statement certifying that it has returned all Company property to Company. Upon termination of this Agreement for any reason, all rights and licenses granted by Company hereunder to Distributor shall immediately cease, provided such termination shall not result in termination of End User Agreements extended to End Users. Invoicing and payment terms with regard to any End User License Agreement, and for ongoing support thereof, as well as the terms for receipt and provision of such ongoing support, shall remain in full force and effect until such time as the End User License Agreement expires or terminates.

17.5 Survival of Terms

Upon termination or expiration of this Agreement, and in addition to any provisions that expressly provide to survive any termination of this Agreement, the provisions of this Agreement providing for payment of Fees to Company, protection of Company's proprietary rights, warranties, the limitation of liability, compliance with laws, indemnities, arbitration and other provisions of this Agreement concerning the ongoing interests of Company, including, but not limited to, Sections 2.3, 5, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18, shall continue and survive in full force and effect.

ARBITRATION

1. The parties agree that any dispute, claim or controversy relating in any way to this Agreement shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (“AAA”), with judgment upon the award rendered by the arbitrator to be entered in any court of competent jurisdiction. Notwithstanding the foregoing or the then-current specified Commercial Arbitration Rules, the following shall apply with respect to the arbitration proceeding: (i) the arbitration proceeding shall be conducted by one arbitrator selected by the parties, provided if the parties fail to make such designation within five days after receipt by the AAA of any demand for arbitration, the AAA shall make the appointment in its sole discretion; (ii) the existence, subject, evidence, proceedings, and ruling resulting from the arbitration proceedings shall be deemed confidential information, and shall not be disclosed by either party, their representatives, or the arbitrator (except: (a) to the Professional advisers of Company or Distributor; (b) in connection with a public offering of securities by Company or Distributor; (c) as ordered by any court of competent jurisdiction; or (d) as required to comply with any applicable governmental statute or regulation); (iii) the arbitrator shall be required to prepare written findings of fact; and (iv) the arbitrator may grant any relief or remedy which the arbitrator deems just and equitable provided, however, that the arbitrator shall have no authority to, and may not, in any event, make any ruling, finding or award that does not conform to the terms, limitations and conditions of this Agreement.
2. Each party to the arbitration is to pay an equal part of the deposit fixed by the AAA. Notwithstanding the determination of the arbitrator (i) all costs associated with the arbitration and imposed by the AAA or the arbitrator shall be borne equally by each party to the arbitration, and (ii) each party to the arbitration shall be responsible for its own attorneys’ fees and other Professional fees incurred in connection with the arbitration. Determinations of such arbitrator will be final and binding upon the parties to the arbitration, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction, or application may be made to such court for a judicial acceptance of the award and an order of enforcement, as the case may be. The arbitrator shall apply the law of the Country of Great Britain without giving effect to its conflict of law rules. All proceedings before the arbitrator shall be conducted in the English language.

LIMITATION OF LIABILITY

1. EXCEPT FOR EACH PARTY'S CONFIDENTIALITY OBLIGATIONS UNDER SECTION 11.2 AND INDEMNIFICATION OBLIGATIONS HEREUNDER, INCLUDING INFRINGEMENT OBLIGATIONS HEREUNDER, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY UNDER THIS AGREEMENT, REGARDLESS OF THE FORM OF CLAIM OR ACTION, IN AN AMOUNT THAT EXCEEDS THE TOTAL FEES PAID OR OWED TO COMPANY UNDER THIS AGREEMENT FOR THE PREVIOUS TWELVE MONTH PERIOD. THIS LIMITATION OF LIABILITY IS THE TOTAL AGGREGATE FOR A PARTY, AND IS NOT PER INCIDENT.
2. EXCEPT FOR EACH PARTY'S CONFIDENTIALITY OBLIGATIONS UNDER SECTION 11.2 AND INDEMNIFICATION OBLIGATIONS HEREUNDER, INCLUDING INFRINGEMENT OBLIGATIONS HEREUNDER, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR SPECIAL, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, OR INDIRECT DAMAGES OR COSTS (INCLUDING LEGAL FEES AND EXPENSES) OR LOSS OF GOODWILL OR PROFIT IN CONNECTION WITH THE SUPPLY, USE OR PERFORMANCE OF OR INABILITY TO USE THE PRODUCTS, ANY SERVICES PROVIDED HEREUNDER, OR IN CONNECTION WITH ANY CLAIM ARISING FROM THIS AGREEMENT, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR COSTS.
3. Except for claims arising from third party indemnification obligations hereunder, no action arising out of this Agreement, regardless of form, may be brought by either party more than two years after the date the cause of action has accrued.

MISCELLANIOUS

20.1 Entire Agreement; Amendments

This Agreement and the Appendixes hereto represent the entire understanding between the parties hereto and supersede all other written or oral agreements heretofore made by or on behalf of Company or Distributor and may be changed only by agreements in writing signed by the authorized representatives of the parties.

20.2 Applicable Law

This Agreement has been made, executed and delivered in the Country of Great Britain in which state the offices of Company are located. Accordingly, the parties invoke the laws of the Country of Great Britain regarding the protection of their rights and enforcement of their obligations hereunder and they mutually stipulate and agree that this Agreement is in all respects (including, but not limited to, all matters of interpretation, validity, performance and the consequences of breach) to be exclusively construed, governed and enforced in accordance with the internal laws (excluding all conflict of laws rules) of the Country of Great Britain and any applicable laws of the British Crown Territory and/or Realm where the Software has been distributed, as from time to time amended and in effect. Except as provided in Section 16 (related to Arbitration of disputes), both parties consent and submit to the jurisdiction and venue over any action, suit or other legal proceeding that may arise out of or in connection with this Agreement, by the Queen's Bench Court of the City of London. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply in any respect to this Agreement or the parties hereto.

20.3 Relationship of Parties

Nothing in this Agreement shall constitute or be deemed to constitute a partnership between the parties hereto or constitute or be deemed to constitute Distributor as agent of Company, or its affiliates, for any purpose whatever, and neither party shall have authority or power to bind the other party, or its affiliates, or to contract in the name of or create a liability against the other party or its affiliates, in any way or for any purpose.

20.4 Assignment

Neither this Agreement, nor the obligations of either party, may be transferred or assigned by either party without the prior written consent of the other party. Notwithstanding the foregoing, Distributor may subcontract End User Support or other services related to the Products.

20.5 Waiver

A waiver by either of the parties hereto of any breach by the other party of any of the terms, provisions or conditions of this Agreement or the acquiescence of either party hereto in any act (whether commission or omission) which but for such acquiescence would be a breach as aforesaid, shall not constitute a general waiver of such term, provision or condition of any subsequent act contrary thereto.

20.6 Notice

All communications between the parties which are required or permitted to be in writing shall be sent by hand delivery, with receipt obtained, or by recognized courier, properly prepaid and sent to the addresses specified in the first paragraph of this Agreement. All such communications shall be deemed received by the other party upon the earlier of actual receipt or actual delivery to the address specified in the first paragraph of this Agreement. By written communication, either party may designate a different address for purposes hereof.

20.7 Force Majeure

If the performance of this Agreement by either party, or of any obligation under this Agreement, other than the payment of Fees, is prevented, restricted or interfered with by reason of war, revolution, civil commotion, riot, fire, flood, disaster, acts of public enemies, blockade or embargo, strikes, any law, order, proclamation, regulation, ordinance, demand, or requirement having a legal effect of any government or any judicial authority or representative of any such government, or any other act whatsoever, whether similar or dissimilar to those referred to in this Section, which is beyond the reasonable control of the party affected, such party shall, upon giving prior written notice to the other party, be excused from such performance to the extent of such prevention, restriction, or interference, provided that the party so affected shall use its best efforts to avoid or remove such causes of non performance, and shall continue performance hereunder with the utmost dispatch whenever such causes are removed. Notwithstanding the foregoing, if such act or condition beyond reasonable control continues for a period of 180 days or more, the unaffected party may, on notice to the party affected, terminate this Agreement, and neither party shall have any further obligation to the other save for those provisions hereunder which, by their terms, survive the termination of this Agreement.

20.8 Headings

The section and subsection headings in this Agreement are inserted solely as a matter of convenience and for reference, and shall not be considered in the construction or interpretation of any provision hereof

20.9 Severability

If any provision hereof is declared invalid by a court of competent jurisdiction, such provision shall be ineffective only to the extent of such invalidity, so that the remainder of that provision and all remaining provisions of this Agreement will continue in full force and effect.

20.10 Appendixes

Appendix A, B, C, D, E, and F, described below and attached hereto, are incorporated into this Agreement wherever referenced.

- Appendix A Description of Software
- Appendix B Software Transaction Fee
- Appendix C Request For Quote
- Appendix D Sample Beta Release Schedule (illustrative only)
- Appendix E Training Service

SOURCE CODE ESCROW

21.1 Escrow Election

At its option, Distributor may ask Company to escrow the Products. Company shall within thirty days of any such request deposit into escrow source code for the Company-owned Products, and will deposit any Updates to the source code into escrow from time to time during the Term not less frequently than once every six (6) months.

21.2 Escrow Deposit

Company shall ensure that the deposited source code will include sufficient instructions to allow Distributor to build the release into an executable version of the Products and such release will be the version currently in use by Distributor, that all components of the Products which are required for Distributor to build an executable of the Products will be deposited and that the deposit will be free of computer viruses or disabling functions or keys.

21.3 Release Conditions

Upon the occurrence of an Event of Default, as defined below, Distributor may demand release of the source code from the escrow agent, pursuant to the terms of the Escrow Agreement, to continue to maintain the Products and is hereby granted a limited, non-exclusive, nontransferable, royalty-free license to use the source code to make such modifications to the Products it considers necessary or appropriate and solely for ordinary course support and maintenance of the current version of the Products, including without limitation, bug fixes, and any derivative works of the Products needed to sustain the continued development and use of the Distributor Solution by Distributor and its customers, but expressly excluding new enhancement or versions, and ports which have not been commercially released by Company nor licensed by Distributor to its end use customers.

21.4 Event of Default

As used herein an “Event of Default” means: Company or its assignee is in material breach of its obligations as to support or maintenance of the Products under this Agreement and has failed to remedy such default notified by Distributor to Company within thirty (30) days. Distributor must notify the escrow agent of the Event of Default promptly, setting out the facts and circumstances of the Event of Default.

21.5 Ongoing Obligations

During the term of this Licence Agreement, Distributor agrees to handle the delivered source code in its original format and will only disclose it to third parties through reference of the original source and not branches of the source which have been altered by 3rd parties. If Distributor chooses to continue distributing the Software, to which Distributor has source code access, while identifying themselves as licenced Distributor before or after the expiration of this agreement, Distributor will be fined to the amount of the licence renewal fee

21.6 Escrow Fees

All escrow fees and costs shall be for the account of Distributor and fully paid by Distributor. Company shall be entitled to reasonably select the Escrow Agent.

APPENDIX A – DESCRIPTION OF SOFTWARE

The Wave® Operating System (WaveOS™)

22.1 Introduction (Laymens Terms)

WaveOS™ is a free and open-source software. The purpose of WaveOS™ is to make Energy & Internet Free. The software operates on a wide range of hardware devices known as Single Board Computers. Wave® transforms these devices into a wide range of smart home solutions, all able to reduce the users energy & internet bills each month.

The list of smart home functions WaveOS™ can perform includes a **Smart Home Hub™** (with media center, camera monitor and IoT home control), a **Wi-Fi Signal Booster™**, a **Media Storage Device** and a **Extender (Wi-Fi to HDMI) Link** etc. And with added accessories such as **GPS Antenna** or **CT Clips** Wave® can even transform the device into a (Mobile Carrier-Free) **USSD/GPS Tracker** or **LTE Home Hub™**. What the device does is determined by the user during initial installation. The options presented to users are named **Software ‘Editions’** e.g. **Energy Monitor Edition™**, **Home Hub Edition™** etc

After Wave® has been copied onto the memory of a Single Board Computer and the device booted-up, the software will autonomously transform the device into a **Wi-Fi Hotspot**. The user can then connect to the device and interface with it in order to select a software edition and complete the installation, in much the same way as a **Wi-Fi router**. All that is required of the user is they provide power to the device and connect it to their routers ethernet port (so it has access to the internet). Other than a prompt to select a Software Edition, the installation is completely automatic. By making the solution self-build autonomously and presenting the user a friendly interface, it has been possible to eliminate the need to commisSiôn an engineer to configure, integrate and/or construct your Smart Home.

Using WaveOS™ a non-skilled End-User is now able to use the exact same hardware and same software to generate for themselves, a wide range of smart home devices. In much the same way we have a mobile phone and a familiar operating system, running applications which transform our devices into a media center, game console etc - Wave® does the same for the devices required to make our homes smarts and most of all our energy & internet free. WaveOS™ is freedom for anyone to produce their own smart home products within their home, including re-arranging the hardware and interchanging their roles, at the users own discreSiôn, with no programming skills required.

WaveOS™ is a solution which removes the complexity out of producing a smart home, which until now has required End-Users to purchase seperate hardware products, from seperate manufacturers, each with seperate software and interfaces (and/or commisSiôn a custom installers) in order to achieve the same objectives in almost every case. These objectives include **Extender media**, **smart home control**, **remote access**, **monitoring** and **lower energy bills**.

A Single Board Computer with WaveOS™ installed and **Home Hub Edition™** selected, will produce a **Wave® Home Hub™ Product**. Equally a device with **Energy Monitor Edition™** selected during initial installation, will product a **Wave® LTE Home Hub™ Product**. And so forth. By combining **the products** WaveOS™ produces, it is possible to quickly assemble a complete **Wave® Smart Home** - able to achieve many essential smart home functions including **smart lighting**, **appliance/ plug-socket control**, **Extender media** etc.

The theme and ultimate objective of WaveOS™ is to reduce energy and internet bills. Progress so far suggests energy and internet can actually become 100% free if the development of WaveOS™ continues on the path it's on. Embedded within the software are methods to achieving this end. The Energy Monitoring and home control applications, combined with the multi-user interface and remote access, gives occupants of any household 24/7 full home monitoring and controls, wherever they are. The solution also allows scheduling and rule based home controls, so no more excuses for accidentally leaving lights and tv's on.

22.2 Technical Description (Summary)

WaveOS™ is a user-friendly operating system (no programming skills required to operate it). Built on the work of DietPi and Raspbian Jessie (Linux) and designed to run on single board computers like the Raspberry Pi. The source code is public on GitHub and the compiled software is free and available for worldwide download from <https://makeitwave.com/download.html>

Wave® can establish a low cost, fully connected smart home in a matter of minutes. The underlying objective of this is a system designed to transition homes from paid internet and electricity to free internet and electricity. The even further underlying technology which achieves this is cryptocurrency-based monetisation technologies, which turns user activity in their home into revenue, which can be diverted to utility providers autonomously using smart contracts, resulting in reduced and perhaps free electricity and internet for homes. The specific embedded technologies involve cryptocurrency mining and ad-reinserSiôn.

The margin between revenues generated from this model and what is paid to utility companies is expected to increase over time as the network grows, the technology improves and the current trends continue. Herein lies the Wave® business model and market opportunity.





The Operating System benefits End Users with Energy Monitoring, Smart Home Control, Media, IPCCTV and many more locally hosted and remotely accessible applications, all on a single menu/dashboard.

Licensed Distributors will benefit from being able to source hardware, quickly and easily install this free Operating System onto it and set-up a pioneering solution for End User(s) for a fee of their choosing in a matter of minutes. Upselling and Cross Selling practically every smart home accessory, since WaveOS™ applications are compatible with most other peripheral systems for homes e.g. solar energy inverters, IPCCTV cameras, Smart Plug Sockets, Air Conditioning Systems, Wi-Fi Lighting etc.

For End-Users the cost of a fully connected, subscription-free smart home, with local and remote access, has reduced in price by a factor of 10 with the development of WaveOS™ for Single Board Computers (SBC's). Benefits of this solution of rival solutions includes easy and cheap, modular replacement over time, easier understanding and day to day operation, lower energy consumption and a middle management system that seamlessly binds together practically every current and future technology for their home(s).

DOCUMENT AUTHOR(S):

23.1 Siôn H. Buckler

Organisation	Role	Details
	Founder & CEO	Make it Wave Ltd, British Corporation (England & Wales), Company Director ID 11363386
	Head of Defence	Caribbean Communications Unit (CCU), Royal Corps of Signals, Life Member ID 55983
	Council President	Utilities as a Right (UaaR) Society, British Public Servant, Gov/Oath ID 25148537
	Military Theorist	Scottish Bay, Dominican Republic (Green Line & Treaty of Guarantee)

About Siôn Buckler - Science & Computer Science (Bachelors), Electronic Engineering, Industrial Electronics and Electronics & Computing (Advanced Diplomas), Cisco Certified Network Associate (CCNA), Microsoft Certified Solutions Expert (MCSE), Certified Project Management (Prince2 Practitioner), Institute of Electronic Engineering (IEEE), Siemens Certified Engineer, Certified Telecommunications Service Provider (NVQ3), Satellites & Full Spectrum Radio, Fixed Telecommunications Systems with Enhanced Capabilities , SKP01 Electrical Safety, NVQ2 IT, Defence Specialist LAN, TCP/IP, Subnetting, DHCP, Addressing, Routing & Browsing, Communications Equipment Room Design & Maintenance, Military Command & Leadership, Cyber Security, Electronic Warfare, SIP/ VOIP,

SEO, PPC, HTML5, CSS3, Java, Perl, Ajax, JQuery, MySQL, Unix, Python, Linux.