

DYALOG LIMITED ("DYALOG LTD.")

DEVELOPER SOFTWARE LICENCE AGREEMENT

INTRODUCTION:

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BY USING THIS SOFTWARE YOU ARE AGREEING TO ACCEPT AND BE BOUND BY THIS LICENCE AGREEMENT. THE TERMS SET OUT BELOW CANNOT BE VARIED UNLESS SUCH VARIATION IS AGREED TO IN WRITING BY AN AUTHORIZED REPRESENTATIVE OF DYALOG LTD.

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AGREEMENT:

1. Definitions

- 1.1 **"DYALOG LTD."** means Dyalog Limited of Minchens Court, Minchens Lane, Bramley, Hampshire RG26 5BH United Kingdom or such other address as it may designate from time to time
- 1.2 **"You"** means the Person who has obtained a licence to use the Software on the terms set out in this Licence Agreement (and "Your" shall be construed accordingly)
- 1.3 **"Third Party Material"** means any Third Party Supplier software or other items supplied to You by DYALOG LTD.
- 1.4 **"Software"** means the development versions of the computer programming language known as "Dyalog" used by You (including any Third Party Materials and/or upgrades referred to in 2.3.3 below) and any part of the foregoing
- 1.5 **"Computer"** means the single computer on which You are authorised to use the Software
- 1.6 **"Fees"** means the purchase price of the Software and such annual or other fees as are specified by DYALOG LTD. for use of the Software or as otherwise stipulated by DYALOG LTD. from time to time

- 1.7 **"Commercial Purposes"** are those purposes for which a fee, rate, charge or other consideration is charged, or are those purposes directly or indirectly connected with any business, or which are otherwise intended for profit.
- 1.8 **"Person"** includes any natural or legal person
- 1.9 **"Terms and Conditions"** means DYALOG LTD.'s terms and conditions on licences, a copy of which has been made available to You.
- 1.10 **"Third Party Supplier"** means any person supplying Third Party Material

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- 2.2 The rights granted to You are strictly personal and You agree not to:
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 - 2.2.2 otherwise transfer, assign, rent, lease, charge, sell or otherwise dispose of, or part with possession of, the Software (whether on a temporary or permanent basis).
- 2.3 Subject to You paying the Fees in accordance with this Licence Agreement and the conditions set out by DYALOG LTD. from time to time then You shall be entitled to:
 - 2.3.1 use the Software for Commercial Purposes;
 - 2.3.2 support from DSS (the Dyalog Support Service) in accordance with DYALOG LTD.'s applicable terms and conditions from time to time; and
 - 2.3.3 such upgrades to the Software as DYALOG LTD. may release from time to time.
- 2.4 Subject to payment of the Fees in accordance with clause 3 below, You shall be entitled to distribute applications developed using the Software strictly subject to the following conditions:
 - 2.4.1 that You purchase an appropriate run-time licence or licences from DYALOG LTD. (details available at www.dyalog.com); and
 - 2.4.2 NO RESPONSIBILITY FOR THE DISTRIBUTION OF ANY SUCH APPLICATIONS SHALL BE ACCEPTED BY DYALOG LTD. AND YOU SHALL INDEMNIFY DYALOG LTD. FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, PROCEEDINGS, LOSSES, COSTS AND EXPENSES SUFFERED OR INCURRED BY DYALOG LTD. AS A DIRECT OR INDIRECT RESULT OF THE DISTRIBUTION OF ANY SUCH APPLICATIONS.
- 2.5 You will use the Software at all times in accordance with DYALOG LTD.'s reasonable directions and subject to such conditions concerning Third Party Material as DYALOG LTD. is itself subject.
- 2.6 You will be solely responsible (where necessary) for complying with applicable import and export regulations concerning the Software.
- 2.7 Your use of the Software is also subject to the provisions of the Terms and Conditions, and in the event of any inconsistency between the terms of the Terms and Conditions and this Licence Agreement, the

terms of this Licence Agreement shall prevail.

2.8 You shall:

- 2.8.1 ensure that the number of persons using the Software does not exceed one; and
- 2.8.2 notify DYALOG LTD. as soon as You become aware of any unauthorised use of the Software by any person.

3 Payment Terms (for those who use the Software for Commercial Purposes only)

- 3.1 Where You wish to use the Software for Commercial Purposes You will be required to pay the Fees.
- 3.2 All Fees are payable within 30 days of the relevant invoice being raised. All Fees and other sums payable under this Licence Agreement are exclusive of VAT or any relevant local sales taxes, for which You shall be responsible
- 3.3 Without prejudice to its other rights in relation to late payment DYALOG LTD. shall be entitled to charge interest (before as well as after judgment) at the rate of 5% above the Bank of England Base Rate from time to time on overdue sums down to the date of late payment.
- 3.4 You shall pay, for broadening the scope of the licences granted under this licence to cover any unauthorised use, an amount equal to the fees which DYALOG LTD. would have levied (in accordance with its normal commercial terms then current) had it licensed any such unauthorised use on the date when such use commenced together with interest at the rate provided for in clause 3.3, from such date to the date of payment.

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- 4.2 You may install each version of the software on more than one computer provided that it is used on one computer at a time. However, You may *not* (except as may otherwise be permitted by any applicable Law) translate, adapt, vary, modify, disassemble, decompile or reverse engineer the Software without DYALOG LTD.'s prior written consent.
- 4.3 You will not alter, remove or obliterate any trademarks, brand names, copyright or trademark notices or warnings from the Software or any associated materials or packaging.
- 4.4 the Third-Party Materials shall be deemed to be incorporated within the Software for the purposes of this licence (except where expressly provided to the contrary) and use of the Third-Party Materials shall be subject to any applicable terms and conditions of the Third Party Suppliers.
- 4.5 You shall indemnify and hold DYALOG LTD. harmless against any loss or damage which it may suffer or incur as a result of Your breach of any such terms and conditions of the Third Party Suppliers howsoever arising.

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- 5.1 If any claim is brought by any Person alleging that the use of the Software infringes any intellectual property right, DYALOG LTD. shall seek to resolve the claim, either by means of alternative arrangements for the use of the Software or by obtaining permission to use the intellectual property in question. HOWEVER, DYALOG LTD. SHALL NOT BE LIABLE TO YOU FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING AS A RESULT OF ANY SUCH CLAIM.
- 5.2 If You become aware that any of DYALOG LTD.'s (or Third Party Supplier's) rights in the Software are being violated then You agree to notify DYALOG LTD forthwith and to co-operate with DYALOG LTD in taking action in respect thereof.

6. Termination

- 6.1 This Licence Agreement (and Your right to use the Software) shall terminate forthwith without notice from DYALOG LTD. in the event that:
- 6.1.1 You are in breach of any of the terms of this Licence Agreement (including any failure to pay any Fees); or
- 6.1.2 You become subject to any insolvency (or, as appropriate, any bankruptcy) proceedings in the courts of the country where You are domiciled or resident.
- 6.2 Forthwith on termination of this Licence Agreement for any reason You shall (at Your own expense) return to DYALOG LTD. any copies of the Software in Your possession or under Your control (or, at DYALOG LTD.'s direction, destroy the same).
- 6.3 Termination of this Licence Agreement shall be without prejudice to DYALOG LTD.'s accrued rights and the continuance in force of those clauses stated or intended to remain in force including (without limitation) clauses 2.4.2, 2.5, 3.2, 4.1, 5.1, 6.2, 7 to 11 inclusive.

7. Confidentiality

- 7.1 The Software and all other materials and information relating thereto shall be strictly retained under Your control as confidential materials. You undertake (both during the term of this Licence Agreement and after its termination or expiry) to take all reasonable precautions to maintain the confidentiality of the Software including all ancillary materials or information.

8. Warranties/Exclusions

- 8.1 Unless otherwise set out in any written specification, the Software (and any written or other materials supplied) is provided "As Is" and no warranty, condition, undertaking or term, express or implied, statutory or otherwise, as to the condition, performance, quality or fitness for purpose of the Software is given by DYALOG LTD. and all such are excluded to the fullest extent permitted by Law. Furthermore, no warranty is given that the use of the Software will comply with the Laws of any country to which the Software may be exported.
- 8.2 Without prejudice to 8.1 above, DYALOG LTD.'s maximum liability in any event for all claims made under or in respect of matters arising out of this Licence Agreement however arising shall not exceed a sum equivalent to the total of all Fees paid by You at that time.

8.3 Under no circumstances will DYALOG LTD. or any Third Party Supplier be liable for any loss of profits, loss of anticipated savings, loss of revenue, loss of data, loss of goodwill or any other type of special, consequential or indirect loss or damage.

8.4 Nothing in the foregoing shall limit DYALOG LTD's liability in relation to death or personal injury, fraud or any other matter in relation to which liability cannot be excluded by Law. Your statutory rights (if any) are not affected.

9. Governing Law

9.1 This Licence Agreement shall in all respects whatsoever (including formation and interpretation) be governed by the Laws of England and the Courts of England shall have jurisdiction in relation to any dispute arising under or in connection with it.

10. Entire Agreement

10.1 This Licence Agreement, together with the Terms and Conditions, supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the parties relating to its subject matter and the parties confirm that they have not entered into this Licence Agreement on the basis of any representation that is not expressly incorporated into this Agreement. For the avoidance of doubt nothing in this Licence Agreement shall purport to exclude or limit liability for any fraudulent or deliberate misrepresentation.

11. Indemnity

11.1 YOU SHALL FULLY AND EFFECTIVELY INDEMNIFY DYALOG LTD. (AND ITS OFFICERS AGENTS AND EMPLOYEES) FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, PROCEEDINGS, LOSSES, COSTS AND EXPENSES SUFFERED OR INCURRED BY DYALOG LTD. AS A DIRECT OR INDIRECT RESULT OF ANY BREACH OF THE TERMS OF THIS LICENCE AGREEMENT BY YOU.

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12.1 If You are a US Government entity then this clause shall apply. This product is a "commercial component" as this term is defined in 48 C.F.R. 2.101, consisting of "commercial computer software" and "computer software documentation" as such terms are defined in 48 C.F.R. 252.227-7014(a)(1) and 48 C.F.R. 252.227-7014(a)(5), respectively, and used in 48 C.F.R. 12.212 and 48 C.F.R. 227.7202, as applicable, and all as amended from time to time. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202, and other relevant sections of the Code of Federal Regulations, as applicable, and all as amended from time to time, all US Government entities acquire this product only with those rights set forth in this Licence Agreement accompanying this product.