DYALOG LIMITED ("DYALOG LTD.")

SOFTWARE LICENCE AGREEMENT

INTRODUCTION:

PLEASE READ THIS LICENCE AGREEMENT CAREFULLY. IT FORMS THE AGREEMENT UNDER WHICH YOU ARE PERMITTED TO USE THE SOFTWARE (AS DEFINED BELOW).

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 AUTHORISED REPRESENTATIVE OF DYALOG LTD.

IF YOU INTEND TO USE THE SOFTWARE FOR COMMERCIAL PURPOSES (AS DEFINED BELOW) THEN FEES ARE PAYABLE IN ACCORDANCE WITH THE TERMS OF THIS LICENCE AGREEMENT. CURRENT LICENCE FEES ARE SET OUT ON DYALOG LTD.'S WEBSITE AT www.dyalog.com AND ARE SUBJECT TO CHANGE FROM TIME TO TIME.

RESTRICTED USE OF SYNCFUSION LIBRARIES INCLUDED WITH DYALOG APL:
ALL SYNCFUSION LIBRARIES INCLUDED WITH DYALOG APL, OR DISTRIBUTED IN ANY OTHER SHAPE OR FORM BY DYALOG LTD OR ITS REPRESENTATIVES, ARE SUBJECT TO THE RESTRICTION THAT THEY MAY ONLY BE LOADED BY DYALOG APL, BY MODULES WRITTEN SOLELY TO SIMPLIFY OR OTHERWISE IMPROVE THE INTERFACE BETWEEN APL AND THE LIBRARIES, OR FROM COMPONENTS GENERATED BY DYALOG APL (SUCH AS HTML PAGES REFERENCING THE SYNCFUSION JAVASCRIPT LIBRARIES). THE USE OF SYNCFUSION LIBRARIES IS SUBJECT TO THE SAME TERMS AND CONDITIONS THAT APPLY TO THE DYALOG APL SYSTEM WITH WHICH THEY ARE USED. THE USE OF THE SYNCFUSION LIBRARIES FROM ANY OTHER PROGRAMMING TOOL IS PROHIBITED WITHOUT A SUITABLE LICENCE AGREEMENT WITH SYNCFUSION.

In order to preserve and protect its rights under applicable Law, DYALOG LTD. does not sell any rights in its software. Rather DYALOG LTD. grants the right to use its software by means of a software licence. DYALOG LTD. specifically retains title to all DYALOG LTD. computer software and You are solely granted a non-exclusive licence to use such software strictly on the terms and conditions set out below.

AGREEMENT:

1.   Definitions

1.1   **"Basic Licence"** means a licence to use the software on the Computer for Non-commercial Purposes.

1.2   **"Cap"** means £5,000.

1.3   **"Commercial Licence"** means a licence to use the software for Commercial Purposes.

1.4   **"Commercial Purposes"** means those purposes for which a fee, rate, charge or any other consideration is charged, or any purposes directly or indirectly connected with any business or which is otherwise intended for profit or to make money.

1.5   **"Computer"** means the single computer on which You are authorised to use the Software.

1.6   **"DYALOG LTD."** means Dyalog Limited (company number 05322189) of 4 High Street, Alton, Hampshire, GU34 1BU, United Kingdom or such other address as it may designate from time to time.

1.7 **"Fees"** means the fees payable for a Commercial Licence and such annual, royalty or other fees as are specified by DYALOG LTD. for use of the Software or any runtime licence or as otherwise stipulated by DYALOG LTD. from time to time.

1.8 **"Licence"** means the licence to use the Software as set out in this Licence Agreement, whether it be a Basic Licence or a Commercial Licence.

1.9 **"Person"** includes any natural or legal person or entity.

1.10 **"Non-commercial Purposes"** means those purposes for which no fee, rate, charge or other consideration is charged to any third party, or which is considered by DYALOG LTD as a charitable, educational or other not for profit purpose and which is not otherwise considered a Commercial Purpose.

1.11 **"Revenue"** means gross revenue received by You (or End User where appropriate) generated by sales, consulting and support of applications and end products developed using the Software.

1.12 **"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.

1.13 **"You"** means any 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) and/or any End User who is deemed to have obtained a Licence under the terms of clause 2.4 and/or 2.5.

1.14 **"Terms and Conditions"** means DYALOG LTD.'s terms and conditions on licences, a copy of which has been made available to You.

1.15 **"Third Party Material"** means any Third Party Supplier software or other items supplied to You by DYALOG LTD.

1.16 **"Third Party Supplier"** means any person supplying Third Party Material**.**

2. **The Licence**

2.1 Subject to the terms of this Licence Agreement, DYALOG LTD. hereby grants and You hereby accept on the terms of this Licence Agreement a non-exclusive Basic Licence. DYALOG LTD. hereby reserves all rights not expressly granted to You. No fees are payable for a Basic Licence.

2.2 The rights granted to You are strictly personal and You agree not to:

2.2.1 distribute the Software or allow any other Person to use the Software without DYALOG LTD.'s express written permission or otherwise in accordance with the terms of this Licence Agreement; and/or

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, You shall be entitled to:

2.3.1 obtain, or upgrade to, a Commercial Licence;

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   If You hold a Commercial Licence and wish to distribute applications or end products, you must also obtain an appropriate run-time licence or licences from DYALOG LTD. (details available at www.dyalog.com) in addition to your Commercial Licence.

2.5   If You hold a Basic Licence only, You shall be entitled to distribute applications and end products developed by You under your Basic Licence strictly subject to the following conditions:

   2.5.1   that You obtain an appropriate run-time licence or licences from DYALOG LTD. (details available at www.dyalog.com) (and the DYALOG LTD. royalty-based run time licence shall automatically apply as the default run-time licence from the moment You start distributing applications and end products, which licence charges a fee of 2% on all annual Revenue that meets or exceeds the Cap);

   2.5.2   You provide all End Users (as defined below) with a copy of the LICENSE file in a prominent position to ensure that all End Users are aware of the DYALOG LTD. licence terms and conditions;

   2.5.3   that You upgrade to a Commercial Licence as soon as You start using the Software for Commercial Purposes (which would apply as soon as You start receiving Revenue);

   2.5.4   a third party viewer or user of the applications and end products ("**End User**") may use the Software for Non-commercial Purposes under a Basic Licence until such time as the use of the Software by such End User qualifies as a Commercial Purpose, in which instance they will need to obtain a Commercial Licence;

   2.5.5   no End User shall distribute the Software unless such End User also obtains an appropriate run-time licence from DYALOG LTD. (details available at www.dyalog.com) (and the DYALOG LTD. royalty-based run time licence shall automatically apply to such End Users as the default run-time licence which charges a fee of 2% on all Revenue that meets or exceeds the Cap);

   2.5.6   NO RESPONSIBILITY FOR THE DISTRIBUTION OF ANY SUCH APPLICATIONS AND END PRODUCTS 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 AND END PRODUCTS.

2.6   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.

2.7   You will be solely responsible (where necessary) for complying with applicable import and export regulations concerning the Software.

2.8   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.

2.9   You shall:

   2.9.1   ensure that the number of persons using the Software does not exceed one; and

2.9.2 notify DYALOG LTD. as soon as You become aware of any unauthorised use of the Software by any person, including but not limited to the use of applications or end products under clause 2.5.4

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.

4. Copying and Other Restrictions

4.1 The Software (and any accompanying software or written materials) are the subject of copyright and other proprietary intellectual property rights whether of DYALOG LTD. or Third Party Suppliers. Any copying of the Software (or other materials as aforesaid), whether by You, End Users or by others with Your express or implied consent, is strictly prohibited and may result in copyright infringement proceedings or other relevant proceedings being taken against You. Subject to the foregoing You may make copies of the Software solely for back-up purposes.

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.

5. Intellectual Property

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 Licence) shall terminate forthwith without notice from DYALOG LTD. in the event that:

6.1.1   You fail to pay any Fees due under this Licence Agreement on the due date for payment and remain in default not less than 7 days after being notified in writing to make such payment;

6.1.2   You commit a material breach of any other term of this Licence Agreement and (if such breach is remediable) fail to remedy that breach within a period of 21 days after being notified to do so;

6.1.3   You suspend, or threatens to suspend, payment of Your debts or are unable to pay Your debts as they fall due or are deemed unable to pay Your debts within the meaning of the Insolvency Act 1986 ;

6.1.4   You commence negotiations with all or any class of Your creditors with a view to rescheduling any of Your debts, or enter into any compromise or arrangement with Your creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

6.1.5   You apply to court for, or obtain, a moratorium under Part A1 of the Insolvency Act 1986; a a resolution is passed, or an order is made, for or in connection with Your winding up; an order is made for the appointment of an administrator; the holder of a qualifying floating charge over the Your assets has become entitled to appoint or has appointed an administrative receiver; a receiver is appointed over the Your assets; or any event occurs, or proceeding is taken in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clauses 6.1.3 – 6.1.5.

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, including any applications and end products containing such Software) and immediately cease distribution of any relevant applications and end products.

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, 2.5, 3.2, 3.3, 3.4, 4.1, 4.5, 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.

12.   US Government Entity

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.