

## DYALOG LIMITED (“DYALOG LTD.”)

### RUN-TIME SOFTWARE LICENCE AGREEMENT

PLEASE READ THIS LICENCE AGREEMENT CAREFULLY. IT FORMS THE AGREEMENT UNDER WHICH YOU ARE PERMITTED TO USE **OUR** SOFTWARE.

THIS IS A FEE-BEARING LICENCE. THE FEES PAYABLE WILL VARY DEPENDING UPON (FOR EXAMPLE) THE SERVER BEING USED, ITS CAPACITY AND NUMBER OF USERS INVOLVED. CURRENT LICENCE FEES ARE SET OUT ON DYALOG'S WEB-SITE AT [www.dyalog.com] AND ARE SUBJECT TO CHANGE FROM TIME TO TIME. THE LICENCE FEES SPECIFICALLY RELATING TO THIS LICENCE AGREEMENT ARE SET OUT IN THE SCHEDULE BELOW.

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.

IT IS A CONDITION OF THIS LICENCE AGREEMENT THAT YOU MUST ALSO HAVE A DYALOG DEVELOPER LICENCE (EXCEPT IN THE CASE OF A ROYALTY-BASED RUN-TIME LICENCE).

**THIS LICENCE AGREEMENT** is dated ..... and made between

- (1) **DYALOG LIMITED** whose address is Minchens Court, Minchens Lane, Bramley, Hampshire RG26 5BH United Kingdom (the 'Licensor' or 'Dyalog' ) and
- (2) ..... whose address is .....  
(the "Licensee" which expression shall include any person referred to in clause 2.4 below).

#### WHEREAS

- a) The Licensor has developed a computer programming language known as “Dyalog”.
- b) The Licensee desires to obtain from the Licensor a licence to use “Dyalog” to develop its own computer software program(s) which may be executed by “Dyalog” and to distribute the same to others.
- c) The Licensor has agreed to allow the Licensee to develop and distribute its own computer program(s) as above on the terms set out below.

**IN CONSIDERATION** of the mutual covenants and conditions contained in this Licence Agreement (which expression shall include the Schedule) the parties hereto agree as follows:-

## 1. Definitions

- 1.1 **"Dyalog Software"** means a) any DYALOG LIMITED-approved release of any development or run-time version of "Dyalog" and b) if provided, DYALOG FILE SERVER
- 1.2 **"The Fees"** means the fees payable by the Licensee as specified in the Schedule as the same may be varied in accordance with clause 4 below or by agreement of the parties.
- 1.3 **"The Commencement Date"** means the date on which the Licensor executes this Licence Agreement.
- 1.4 **"The Term"** means the term of this Licence Agreement as set out in clause 6 below.

## 2. The Licence

- 2.1 In consideration of the payment by the Licensee of the Fees the Licensor hereby grants and the Licensee hereby accepts on the terms of this Licence Agreement a non-exclusive licence (the "Licence") to use the Dyalog Software for the Term to develop its own computer software program(s) which may be executed by "Dyalog" and to distribute the same to others.
- 2.2 Any further restrictions or limitations relating to the Licensee's use of the Dyalog Software are set out in the Schedule.
- 2.3 The Licensor strictly reserves all rights other than as expressly granted in clause 2.1 above. In particular:
  - 2.3.1 the Licensee is expressly prohibited from distributing **or allowing others to use the Dyalog Software (except as part and parcel of the Licence)** ; and
  - 2.3.2 no licence is given to the Licensee to use the Licensor's name, logo or other trademarks in relation to the distribution of its own software.
- 2.4 The Licensee shall be permitted to assign its rights and obligations under this Licence Agreement (including the benefit of the Licence) to any of its customers at any time provided:
  - 2.4.1 it shall first notify the Licensor in writing of its intention to do so and shall provide the Licensor with such information concerning its customer(s) as the Licensor shall reasonably require;
  - 2.4.2 the Licensee shall remain bound by this Licence Agreement in respect of any fact or matter occurring prior to any such assignment (and, for the avoidance of doubt, clauses 3, 4.3, 4.4, 5, 7 and 8 shall continue to apply to the Licensee); and
  - 2.4.3 the customer(s) shall accept the obligations of the Licensee under this Licence Agreement and shall if required at its own expense execute any further documentation in this respect as the Licensor shall require.

## 3. Licensor's Exclusions

- 3.1 The Dyalog Software is licensed to the Licensee "as is" and no representation, warranty, condition, undertaking or term, express or implied, statutory or otherwise, as to the condition, performance, quality or fitness for purpose of the Dyalog Software is given by the Licensor and all such are excluded to the fullest extent permitted by Law.

- 3.2 Without prejudice to clause 3.1 above, the Licensor's maximum liability in any event for all claims made under or in respect of matters arising out of this Licence Agreement however arising including (without limitation) breach of contract, negligence, misrepresentation (excluding fraudulent misrepresentation) or for any other reason shall not exceed a sum equivalent to the total of all Fees paid by the Licensee. Under no circumstances will the Licensor 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.
- 3.3 Nothing in the foregoing shall limit the Licensor's liability in relation to death or personal injury caused by its own negligence, fraud or any other matter in relation to which liability cannot be excluded by Law.

#### **4. Fees**

- 4.1 In consideration of the grant of the Licence the Licensee agrees to pay the Fees as set out in the Schedule as the same may be varied in accordance with clause 4.2 below .
- 4.2 All Fees referred to in this Licence Agreement are payable annually and may be subject to increase on each anniversary by notice in advance given by the Licensor
- 4.3 Upon request the Licensee shall supply the Licensor with such information as the Licensor shall require to enable it to verify the amount of Fees being paid. Where required by the Licensor but not more than 1 time in any single year of the Term the Licensee shall ensure that an independent third party audit of its use of the Dyalog Software is carried out at its own cost by a suitably qualified person acceptable to the Licensor.
- 4.4 Without prejudice to its other rights in relation to late payment the Licensor 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 payment.

#### **5. Licensee's Warranty/Indemnity**

- 5.1 The Licensor accepts no responsibility whatsoever in relation to any software distributed by the Licensee AND THE LICENSEE AGREES TO INDEMNIFY AND HOLD HARMLESS DYALOG, ITS OFFICERS, SERVANTS AND AGENTS FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, COSTS AND EXPENSES ARISING AS A DIRECT OR INDIRECT RESULT OF THE DISTRIBUTION OF ANY SUCH LICENSEE SOFTWARE.

#### **6. The Term**

- 6.1 This Licence Agreement is an annual agreement. The Licensee shall be entitled to terminate it on any anniversary of this Licence Agreement by at least 30 days' written notice served on the Licensor prior to such anniversary date. In the event of a failure to serve a notice as aforesaid this Licence Agreement shall continue in full force and effect.
- 6.2 Notwithstanding anything else in this Licence Agreement - this Licence Agreement (and the Licence) may be terminated at any time by either party by reason of default by the other in compliance with any of the terms and conditions of this Licence Agreement and a failure to remedy such default within 14 days of receiving notice from the party not in default requiring it to do so, or immediately in the event of the Licensee defaulting in payment.

6.3 In the event of termination of this Licence Agreement for any reason the Licence shall immediately determine and the Licensee shall forthwith deliver up to the Licensor at its own expense all copies of the Dyalog Software in its possession, custody or control or alternatively provide the Licensor with such evidence of its destruction as the Licensor shall reasonably require.

6.4 For the avoidance of doubt termination of this Licence Agreement for any reason shall not entitle the Licensee to the repayment of any Fees already paid and all Fees payable at the time of termination shall be paid forthwith.

## **7. Title**

7.1 The Licensee acknowledges that title and full ownership rights to the Dyalog Software shall remain with and belong to the Licensor and the same is its trade secret whether or not any portion is validly copyrighted, registered or patented and the Licensee agrees to reproduce and include all copyright notices which may appear thereon.

## **8. General**

8.1 Severability. If any term or provision of this Licence Agreement shall be held illegal unenforceable or in conflict with any law of government having jurisdiction over this Licence Agreement the validity of the remaining portions or provisions shall not be affected thereby.

8.2 Clause Headings. The headings herein are inserted for convenience only and shall not be construed to limit or modify the scope of any provision of this Licence Agreement.

8.3 Termination. Termination of this Licence Agreement howsoever arising shall not affect such of the provisions of this Licence Agreement that are expressed or are by implication to operate or have effect after termination (including without limitation clauses 3, 4.3, 4.4, 5, 6.3, 6.4, 7 and this clause) and shall be without prejudice to any right of action already accrued to either party in respect of any breach of this Licence Agreement by the other party.

8.4 Notices. All notices and other written communication permitted or required under this Licence Agreement shall be deemed delivered when mailed as certified or registered, postage pre-paid, addressed to the party to be notified at the address shown on this Licence Agreement. A change of address for notice purposes may be made by the same notice.

8.5 Entire Agreement. This Licence Agreement contains all the agreements representations and understandings of the parties hereto with respect of the matters contained herein, and supersedes any previous understandings, commitments or agreements, oral or written.

8.6 Force Majeure. The Licensor shall not be liable for any failure to perform its obligations under this Licence Agreement by reason of any event outside its reasonable control.

8.7 VAT. All sums of money referred to in this Licence Agreement are quoted exclusive of VAT or other applicable sales tax which shall be payable in addition by the Licensee.

8.8 Governing Law. 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 (although the Licensor reserves the right to take action in any jurisdiction should it prove necessary).

IN WITNESS WHEREOF, the parties hereto have executed this Licence Agreement as of the day and year first above written.

SIGNED on behalf of the Licensor

By .....

Name (print or type) .....

Position .....

Date .....

SIGNED on behalf of the Licensee

By .....

Name (print or type).....

Position .....

Date .....