

RT SOFTWARE LIMITED

NON-EXCLUSIVE DEALER AGREEMENT

DATE: Effective from 1st January 2012

All information **highlighted** to be provided on Dealer Application Form

PARTIES:

- (1) **RT SOFTWARE LIMITED**, a company registered in England under company number 5021140, whose registered office is at 3 Acorn Business Centre, Northarbour Road, Cosham, PORTSMOUTH, PO6 3TH (**RTSW**) and
- (2) **[DEALER NAME]**, a company registered in or formed under the laws of **[dealer country]**, under number **[company number]**, whose registered office or principal place of business is at **[dealer address]**, (**the Dealer**).

1. Definitions

1.1 In this Agreement the following expressions have the meaning set opposite:

this Agreement	this document, including its Schedule, as amended from time to time in accordance with Clause 18.1;
the Charges	the price payable per licence of the Software and the other charges and fees set out in the Schedule;
a Clause	a clause in this Agreement;
the Commencement Date	the Commencement Date set out in the Schedule;
Consultancy Services	advice and assistance from RTSW in connection with the Software or in connection with the Dealer's provision of Professional Services, or both;
Control	the power, directly or indirectly, to direct or cause the direction of the management of an undertaking, regardless of whether through the ownership of shares, by contract, or in any other way and 'Controls' and 'Controlled' are to be interpreted accordingly;
a Current Licence Agreement	an End User Licence that has not expired or been terminated;

a Demonstration Copy	a copy of the Software supplied by RTSW solely to the Dealer for the purpose of demonstrating the Software to potential End Users;
a Dongle	a software licence key or other device that allows the Software to be used;
an End User Licence	RTSW's standard form of end user licence agreement for the Software from time to time (a copy of which is available from RTSW);
an End User	a third party who has been permitted under an End User Licence to use the Software for its own internal purposes (as opposed to reselling, distributing or supplying the Software);
the Equipment	servers, client workstations, PCs communications and other systems that comply with the minimum requirements recommended by RTSW from time to time;
an Error	a failure of the Software, when properly used on the Equipment, to function substantially in accordance with the User Documentation as the result of an error in the coding of the Software;
an Error Correction	a modification, Update, patch or fix to the Software or avoidance or remedial advice provided by RTSW for the purpose of correcting or avoiding the recurrence of an Error;
First-Line Support	the support to be provided by the Dealer to End Users who have a Current Licence Agreement, as described in the Schedule;
Intellectual Property Rights	any patent, copyright, trade mark, trade name, service mark, registered design, design right (registered and unregistered), know-how, right of confidence, trade secret, right to extract or exploit data, database rights, any similar rights protected in any jurisdiction, whether now existing or coming into existence at some future date, any application for any of the above, and any accrued rights of action in respect of any of the above;

the Marketing Materials	any promotional materials, product datasheets, advertising and press releases that RTSW may supply to the Dealer from time to time;
the Minimum Period	the Minimum Period set out in the Schedule;
Moral Rights	all rights under Chapter IV of the Copyright, Design and Patents Act 1988 and all other moral or author's rights existing in any jurisdiction;
the Payment Terms	the payment terms set out in the Schedule;
the Price List	RTSW's price list for the Software and services current from time to time;
Professional Services	the installation of the Software, and training in the use of the Software;
the Schedule	the schedule to this Agreement;
the Service Levels	the service levels set out in the Schedule;
Service Hours	9am to 6pm (London time) on Working Days;
the Software	the software (in object code) listed in the Schedule and any Error Corrections and Updates issued by RTSW to the Dealer from time to time;
the Support Services	the support services to be provided by RTSW for the Software as set out in the Schedule;
the Technical Documentation	any technical documentation and specifications (in hard copy or electronic form) relating to the Software that RTSW may provide to the Dealer from time to time;
the Territory	the geographic area specified in the Schedule;
the Trade Marks	the trade marks, names and logos of RTSW, whether used individually or collectively, and whether registered or unregistered, listed in the Schedule, and all other trade marks that RTSW uses in connection with the Software from time to time;
an Update	any updated or modified version of the Software, but not any new version of the Software that contains

additional functionality;

the User Documentation

any operating manuals and other literature (in hard copy or electronic form) that RTSW may provide to the Dealer from time to time relating to the Software for use by End Users in conjunction with the Software;

a Working Day

a day (except a Saturday or Sunday) on which clearing banks in the City of London are open for business; and

a Year of this Agreement

12 months beginning on the Commencement Date or on any anniversary of that date.

- 1.2 Any reference in this Agreement to a statute or regulation is to be construed as a reference to that statute or regulation as amended or re-enacted from time to time.
- 1.3 The Interpretation Act 1978 applies to this Agreement as if this Agreement were an enactment.
- 1.5 The headings in this Agreement are for ease of reference only; they do not affect its interpretation or construction.

2. The Dealer's Rights

- 2.1 RTSW appoints the Dealer, and the Dealer accepts the appointment, as a non-exclusive Dealer of the Software in the Territory. RTSW may itself market, distribute and license the Software and may provide support and maintenance services, consultancy and other services to users of the Software in the Territory, and may appoint one or more third parties to market, distribute and license and provide such services, or to act as RTSW's agent for the marketing, distribution and licensing of, the Software and the provision of such services in the Territory.
- 2.2 The Dealer warrants to RTSW that the Dealer has, and throughout the term of this Agreement will have, the ability and experience to carry out its obligations under this Agreement, and that by virtue of entering into this Agreement and performing it, the Dealer is not, and will not be, in breach of any express or implied obligation to any third party.
- 2.3 The Dealer may not appoint any reseller, agent, dealer or distributor for the Software and may not sub-contract to any person the provision of First-Line Support and Professional Services to End Users or any of the Dealer's obligations under this Agreement.

3. Duration

- 3.1 This Agreement will continue in force for the Minimum Period. After the end of the Minimum Period it will continue automatically until it is terminated on the expiry of not less than 3 months' written notice given by either party to the other (that notice to expire at any time), or until this Agreement is terminated earlier under Clause 11.
- 3.2 RTSW may discontinue developing, producing, licensing, or distributing all

or any of the Software and/or any services in relation to the Software, and may modify, update and issue new releases and new versions of the Software and Error Corrections, at its discretion, at any time.

4. Supply and Payment

- 4.1 The Software is a dongle protected run time package. The Dealer will order licences of the Software from RTSW by means of ordering a Dongle for each copy of the Software for which the Dealer has an order from an End User in the Territory.
- 4.2 Each order will be an offer to buy the number of licences of the Software on that order. A contract for the sale of the right to grant those licences of the Software to End Users will come into existence only when RTSW notifies the Dealer in writing that RTSW accepts the Dealer's order. RTSW reserves the right not to accept any order, as it sees fit, without giving any reason.
- 4.3 Orders placed by the Dealer purporting to include any terms or conditions except those contained in this Agreement, or to vary the terms of this Agreement, will not be valid unless those other terms and conditions are expressly accepted by RTSW in writing.
- 4.4 The price payable by the Dealer to RTSW for each licence of the Software will be that in the Price List when RTSW accepts the Dealer's order, less any discount calculated in accordance with the Schedule.
- 4.5 The Charges are exclusive of Value Added Tax and all other taxes and duties. The Dealer will pay Value Added Tax in accordance with United Kingdom legislation in force at the tax point and all other taxes and duties payable in connection with the supply of the Software and any Dongle to the Dealer and its export and import into any territory. The Dealer will also pay the cost of shipping and insurance. If RTSW incurs any costs or expense on the Dealer's behalf in respect of handling, packaging, carriage, insurance or other matters relating to the supply or delivery of the Software or any Dongle, those costs and expenses will be payable by the Dealer in accordance on demand in accordance with the Payment Terms.
- 4.6 The Dealer is free to set its own prices for End Users of the Software and for services supplied by the Dealer to End Users (but the Dealer acknowledges that RTSW or RTSW's other resellers, agents, dealers and distributors may supply the Software and/or such services in the Territory at a price that may be more or less than the price charged by the Dealer).
- 4.7 The Dealer will pay RTSW the Charges in accordance with the Payment Terms. The Charges for each licence of the Software will be payable as soon as RTSW accepts the Manufacturer's order for a licence of the Software. Other Charges will be payable as set out in the Schedule.
- 4.8 Any delivery dates are approximate only and RTSW will not be liable if any delivery date is not met.
- 4.9 RTSW may make partial deliveries of copies of the Dongles and may invoice the Dealer even though the whole of an order has not been delivered. RTSW will not be liable for any shortfalls in delivery unless the Dealer notifies them to RTSW within 7 days after delivery.

- 4.10 If the Dealer fails to make full payment of any amount to RTSW when due, without prejudice to any other right or remedy available to RTSW:
- 4.10.1 RTSW may withhold, suspend or delay delivery of all or any of: the Dongle under all or any orders, the supply of Updates and Error Corrections to the Dealer; or the supply of any services;
 - 4.10.2 the entire balance outstanding under all invoices from RTSW to the Dealer will become immediately due and payable to RTSW without further demand; and
 - 4.10.3 the Dealer will pay interest on any overdue sum and the costs of recovery in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
- 4.11 The Dealer may not withhold any payment to RTSW by reason of any claim against RTSW, nor claim any right of set off.
- 4.12 Risk in the Dongles will pass to the Dealer when they leave RTSW's premises. Title to the Dongles will pass to the Dealer when the Dealer has paid in full for that Dongle. If the Dealer obtains possession of a Dongle before it has paid in full for that copy, the Dealer will: keep it separate from any other goods and products and clearly identified as the property of RTSW; take proper care of it, storing it in accordance with any requirements made known to the Dealer by RTSW; not sell or part with possession of it except for supplying it to an End User in accordance with this Agreement; and not create any mortgage, lien or any other charge over it.
- 4.13 The Dealer's failure to pay the full amount in respect of any Dongle or licence when due will give RTSW the right (without prejudice to any other rights or remedies it may have) to repossess that copy of the Dongle (and to enter the Dealer's premises for that purpose if necessary, with or without notice).
- 4.14 Except as provided for in Clause 9, all Dongles and copies of the Software supplied to, or downloaded by, the Dealer are for supply to End Users.

5. The Dealer's Obligations

During the term of this Agreement, and in the case of Clause 5.7 and Clause 5.8, until the expiry of the period specified in that Clause after the termination of this Agreement, the Dealer will at all times observe and perform the terms and conditions of this Agreement and, in particular, the Dealer will:

- 5.1 Intentionally left blank.
- 5.2 ensure that its employees are adequately trained and have sufficient expertise to be able to demonstrate and market the Software to potential End Users throughout the Territory;
- 5.3 Intentionally left blank.
- 5.4 Intentionally left blank.
- 5.5 Intentionally left blank.

- 5.6 not by itself, or with others, participate in any illegal, deceptive, misleading or unethical practices, including, but not limited to, disparagement of the Software or RTSW, or engage in other practices which may be detrimental to the Software or RTSW;
- 5.7 Intentionally left blank.
- 5.8 Intentionally left blank.
- 5.9 provide First-Line Support to End Users in the Territory who have a Current Licence and employ a sufficient number of staff who are capable of providing First-Line Support to End Users, so that high quality First-Line Support is provided to End Users who have a Current Licence and that support complies with any commitment made by the Dealer to End Users and at least meets the Service Levels;
- 5.10 Intentionally left blank.
- 5.11 Intentionally left blank.
- 5.12 inform RTSW promptly of:
 - 5.12.1 all Errors reported by any End User and of each complaint relating to the Software, and of all complaints and all after-“sales” enquiries about the Software received by the Dealer and of each complaint relating to the Software; and
 - 5.12.2 all matters that come to the Dealer’s notice and that are likely to be relevant in relation to the manufacture, licensing, use or development of the Software.
- 5.13 Intentionally left blank.
- 5.14 Intentionally left blank.
- 5.15 Intentionally left blank.
- 5.16 not make any promises or representations, or give any warranties, guarantees or indemnities in respect of the Software except those contained in the End User Licence, or as otherwise expressly authorised by RTSW in writing. Further, the Dealer will not supply a copy of the Software to anyone if the Dealer knows that the Software does not meet that person's requirements;
- 5.17 Intentionally left blank.
- 5.18 pay its own promotion, advertising, sales and marketing costs;
- 5.19 Intentionally left blank.
- 5.20 Intentionally left blank.
- 5.21 Intentionally left blank.
- 5.22 Intentionally left blank.
- 5.23 procure that each End User agrees to, and is bound by, the End User Licence and will not, in any way, modify or amend the End User Licence;
- 5.24 carry out pre-“sales” activities, including qualifying prospective End Users for the Software, conducting demonstrations and preparing quotations and

- proposals for submission to prospective End Users;
- 5.25 Intentionally left blank.
- 5.26 Intentionally left blank.
- 5.27 comply with all local laws and regulations relating to the method of packaging, labelling, sale and licensing of the Software in the Territory, and the registration of this Agreement and the registration of any rights granted to the Dealer under it;
- 5.28 keep RTSW fully and properly advised of all changes in any laws and regulations in the Territory that might affect RTSW's business or the licensing of the Software to End Users in the Territory, and obtain all necessary export and import licences relating to the export of the Software from the United Kingdom and their import into the Territory;
- 5.29 ensure that where, at the Dealer's request, RTSW gives a specific extra discount to the Dealer for a specific End User or class of End Users, that End User or those End Users receive the full amount of that discount;
- 5.30 not solicit orders for the Software from End Users outside the Territory without first obtaining RTSW's written consent;
- 5.31 clearly indicate to all prospective End Users and to all End Users that the Dealer is acting on its own account, not as an agent of RTSW and, and has no authority to agree any change to the End User Licence. If a prospective End User requests a change to the End User Licence, the Dealer will promptly forward that request to RTSW. RTSW may, in its sole discretion, agree in writing to that request or negotiate the terms requested directly with the prospective End User or notify the Dealer that RTSW is not prepared to negotiate or agree to any change;
- 5.32 not provide a copy of the Software to anyone who has not entered into an End User Licence;
- 5.33 Intentionally left blank.
- 5.34 submit an order for a licence of the Software and a Dongle to RTSW promptly following receipt of an order from each prospective End User, and in no event later than the earlier of 7 days following receipt of that order or the date of the Dealer's invoice to that End User;
- 5.35 when submitting any order for a licence of the Software, inform RTSW of the full contact details of the End User;
- 5.36 not duplicate or reproduce any of the Software in any form without first obtaining the written consent of RTSW. If RTSW agrees to that duplication or reproduction the Dealer will duplicate and reproduce the Software only in accordance with the written instructions and guidelines supplied by RTSW to the Dealer from time to time;
- 5.37 Intentionally left blank.
- 5.38 Intentionally left blank.
- 5.39 Intentionally left blank.

5.40 Intentionally left blank.

6. RTSW's Obligations

RTSW will:

- 6.1 make available to the Dealer any materials and any information, know-how and documentation (in each case in the English language) and training as in each case RTSW considers requisite from time to time to assist the Dealer to market, distribute, sell and support copies of the Software and to provide Professional Services and First-Line Support for the Software in accordance with this Agreement in the Territory;
- 6.2 provide the Support Services;
- 6.3 if the Dealer requests a visit by RTSW to the Dealer's offices, any End User's premises or elsewhere in the Territory, make reasonable efforts to meet that request, provided that RTSW may make a charge for the time spent and the expenses incurred in connection with that visit in accordance with RTSW's standard scale of charges in force from time to time. The Dealer will pay those charges and expenses within 30 days after the date of RTSW's invoice for the same; And
- 6.4 where separately agreed in writing between RTSW and the Dealer, provide Consultancy Services to the Dealer.

7. Intellectual Property Rights

- 7.1 RTSW grants to the Dealer a non-exclusive licence to: translate the Marketing Materials and User Documentation into the local language(s) of the Territory; to distribute copies of the translated Marketing Materials in the Territory; to supply copies of the translated User Documentation to End Users in the Territory; and to incorporate extracts from the User Documentation in training materials.
- 7.2 The Dealer will not use or publish any such translation until that translation has been approved in writing by RTSW. Despite any approval given by RTSW, the Dealer will withdraw any translation from use and circulation immediately on receipt of a request from RTSW to do so.
- 7.3 The Dealer now assigns to RTSW with full title guarantee all Intellectual Property Rights in the translation of the Marketing Materials and in the User Documentation made by the Dealer. If the Dealer commissions a third party to make that translation, the Dealer will either acquire the Intellectual Property Rights so that it is able to assign them to RTSW or will procure that the translator and his employer assign all Intellectual Property Rights in the translation to RTSW with full title guarantee. The Dealer will also ensure that the translator waives all Moral Rights in relation to the translation of the Marketing Materials and the User Documentation.
- 7.4 RTSW grants to the Dealer the non-exclusive right to copy and use the Technical Documentation solely for use by the Dealer's staff involved in providing First-Line Support and Professional Services to End Users, but not for distribution to any End User or anyone else.

- 7.5 The Dealer acknowledges that all Intellectual Property Rights in the Software, in the Marketing Materials, in the Trade Marks, in the User Documentation and in the Technical Documentation, as between the Dealer and RTSW, are and will remain RTSW's property.
- 7.6 RTSW grants the Dealer the non-exclusive right to use, and the Dealer will use, the Trade Marks on all literature, advertising, promotional material and other publications (including the Dealer's website) used by the Dealer and which refer to the Software, provided the Dealer:
- 7.6.1 includes an acknowledgment of the proprietary rights of RTSW;
 - 7.6.2 complies with any guidelines that RTSW issues on the use of the Trade Marks from time to time; and
 - 7.6.3 complies with Clause 7.7.
- 7.7 The Dealer will not register any Intellectual Property Rights relating to the Software or the Trade Marks, and the Dealer will provide RTSW with any reasonable assistance that RTSW requires in registering any Intellectual Property Rights in the Territory.
- 7.8 The Dealer will:
- 7.8.1 not supply the Software to anyone or allow anyone to access the Software by means of an on-line service unless that person has entered into a binding End User Licence;
 - 7.8.2 not supply or allow access to Error Correction or any Update, nor provide any First-Line Support or Professional Services to anyone unless that person has a Current Licence Agreement;
 - 7.8.3 on the expiry of any End User Licence without renewal, use all reasonable endeavours to ensure that the End User returns the Software to the Dealer and deletes all copies of it from the End User's systems;
 - 7.8.4 on RTSW's request, terminate any End User Licence where there has been a material breach or persistent breaches of that End User Licence by the End User;
 - 7.8.5 not use or copy the Software, the User Documentation, the Technical Documentation, the Trade Marks or the Marketing Materials except as permitted in this Clause 7;
 - 7.8.6 report promptly to RTSW any third party claim relating to the Intellectual Property Rights in the Software or any associated documentation, or in the Trade Marks that comes to the Dealer's attention, and co-operate with RTSW in any enforcement or other protective action taken by RTSW to protect or defend its Intellectual Property Rights or any such claim; and
 - 7.8.7 report any breach or suspected breach of any End User Licence by any End User to RTSW as soon as possible after the Dealer becomes aware of it, and co-operate with RTSW in any enforcement or other protective action taken by RTSW to protect or defend its Intellectual Property Rights.

8. Confidentiality

- 8.1 The Dealer will keep confidential, and not use for any purpose except exercising its rights and performing its obligations under this Agreement, the Technical Documentation and any information relating to the Software, and any information about RTSW's business, its financial affairs, its methodologies, strategies, plans, technology or its customers or licensees. The Dealer will notify RTSW immediately if the Dealer becomes aware of any unauthorised use of any of that information or of the Software by anyone.
- 8.2 The Dealer will not, without first obtaining RTSW's written consent, disclose any of the materials, documents or information protected by clause 8.1 to anyone except:
- 8.2.1 the Dealer's employees and then only to those who need to know or to have access to them in order to comply with the Dealer's obligations under this Agreement; or
- 8.2.2 the Dealer's auditors, HM Inspector of Taxes, HM Customs & Excise and any other person having a right, duty or obligation to know the Dealer's business, but then only in pursuance of that right, duty or obligation.
- 8.3 The Dealer will ensure that the people mentioned in Clause 8.2 are made aware, before the disclosure to them of any of materials, documents or information protected by Clause 8.1, that it is confidential and that they owe a duty of confidence to RTSW. The Dealer will indemnify RTSW against all loss and damage which RTSW may sustain or incur as a result of the Dealer or its employees and anyone else who has access to any of the materials, documents or information protected by Clause 8.1 through the Dealer, failing to comply with the provisions of this Clause 8.
- 8.4 The Dealer will immediately notify RTSW if the Dealer becomes aware of any breach of confidence by anyone to whom the Dealer discloses any of the materials, documents or information protected by Clause 8.1, and the Dealer will give RTSW all assistance reasonably required by RTSW in connection with any action or proceedings which RTSW may institute against that person for breach of confidence.
- 8.5 The Dealer will effect and maintain adequate security measures to safeguard the materials, documents and information protected by Clause 8.1 from access or use by any unauthorised person, will retain them and all copies of them under the Dealer's possession and control, will keep a full and accurate record of the Dealer's copying of them, and will produce that record to RTSW from time to time on demand.
- 8.6 The provisions of Clause 8.1 do not apply to any information which is in or comes into the public domain unless as a result of a breach of this Clause 8.

9. Demonstration Copies

- 9.1 RTSW will provide the Dealer, free of charge, with 1 Demonstration Copy. The Dealer will not resell or supply that copy to any third party. If the Dealer wishes to acquire additional Demonstration Copies, it may request these from RTSW and RTSW will, if it considers it reasonably necessary for the Dealer to have those extra Demonstration Copies, supply them to the Dealer at the price of £1,000 plus VAT.

- 9.2 The Dealer may use the Demonstration Copies only to demonstrate the Software to any bona fide prospective End User.

10. Termination

- 10.1 Either party may terminate this Agreement immediately on giving notice in writing to the other if:
- 10.1.1 the other commits any breach of this Agreement and (in the case of a breach which is capable of being remedied) it has failed to remedy it, within 30 days after receiving notice requiring it to remedy the breach; or
 - 10.1.2 the other has a receiver or administrative receiver appointed over it or over any part of its undertaking or assets, or it passes a resolution for winding-up (except for the purpose of a bona fide scheme of solvent amalgamation or reconstruction), or if a court of competent jurisdiction makes an order to that effect, or if it becomes subject to an administration order, or if it enters into any voluntary arrangement with its creditors, or if any similar process to any of the above is begun in any jurisdiction, or if it ceases or threatens to cease to carry on business.
- 10.2 RTSW may terminate this Agreement with immediate effect by giving notice to the Dealer at any time after becoming aware that there has been a change of Control of the Dealer, or that there has been a change of organisation, methods of control or management of the Dealer which RTSW reasonably considers will affect, or has affected, the ability of the Dealer to perform its obligations under this Agreement.
- 10.3 RTSW may suspend its performance of this Agreement if any of the circumstances mentioned in Clause 10.1 or 10.2 arises in relation to the Dealer. That suspension will not prejudice RTSW's right later to terminate this Agreement, either for the same or for a different reason.

11. Effects Of Termination

- 11.1 On the termination of this Agreement:
- 11.1.1 any order placed by the Dealer and accepted by RTSW which has not been fulfilled at the date of termination will be completed on the same terms and conditions as if this Agreement were still in force, subject to payment being received by RTSW of all outstanding monies due to RTSW and in respect of all unfulfilled orders before delivery is made;
 - 11.1.2 the Dealer may fulfil all orders for the Software received by them before the date of termination and may honour their legal obligations to provide First-Line Support and Professional Services to End Users;
 - 11.1.3 subject to Clauses 11.1.1 and 11.1.2, the Dealer's right to market, distribute and license the Software will immediately and automatically terminate;
 - 11.1.4 no End User Licence entered into by an End User before the termination of this Agreement will be affected;

- 11.1.5 subject to Clauses 11.1.1 and 11.1.2, the Dealer will immediately return to RTSW all copies of the Software in the Dealer's possession or control, erase all copies of the Software from any computer system in its possession or control, and will certify to RTSW in writing that this has been done;
- 11.1.6 the Dealer will immediately remove from its website all content that refers to RTSW or the Software;
- 11.1.7 the Dealer will cease to make any reference to RTSW or the Software and will cease using the Trade Marks in its promotional materials and will cease holding itself out as a Dealer of RTSW or of the Software; and
- 11.1.8 the Dealer will, if required in writing by RTSW, return to RTSW all Demonstration Copies, User Documentation, Technical Documentation, Copies of the Software not yet supplied to End Users, all Dongles and all Marketing Materials and all other literature and other materials supplied to the Dealer by (or for) RTSW.
- 11.2 Any termination of this Agreement (however it happens) will not affect any accrued rights or liabilities of either party, nor will it affect the coming into force or the continuance in force of any provision of this Agreement which is expressly, or by implication, intended to come into or to continue in force on or after termination.
- 11.3 Clauses 1, 3.2, 4.5, 4.7, 4.8, 4.9, 4.10, 4.11, 4.12, 4.13, 5.7, 5.8, 5.38, 7, 8, 11, 12, 14, 15, 16, 17, and 18 will survive the termination of this Agreement and continue indefinitely, except for Clauses 5.7 and 5.8 which will continue for the duration set out in those Clauses.

12. Partnership and Third Parties

- 12.1 Nothing in this Agreement creates, evidences or implies any partnership or joint venture between the parties, or the relationship between them of principal and agent.
- 12.2 No third party is entitled to the benefit of this Agreement under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

13. Assignment

The Dealer may not assign, or transfer, or sub-contract this Agreement or any of its rights or obligations under it, whether in whole or in part, without first obtaining RTSW's written consent.

14. No Compensation On Termination

The termination of this Agreement by either party in accordance with its terms will not give the Dealer any right to compensation or damages for loss of profits or prospective profits, loss of business or potential business or loss of its appointment. In no circumstances will the Dealer acquire any goodwill in relation to RTSW's business, its appointment by RTSW or in respect of the Software or its distribution or licensing in the Territory, or otherwise under or in respect of this Agreement.

15. Indemnity

- 15.1 The Dealer will indemnify and keep RTSW fully and effectively indemnified on demand from and against any and all losses, claims, damages, costs, charges, expenses, liabilities, demands, proceedings and actions which RTSW may suffer or incur, or which may be brought or established against it by any person, and which in any case arises out of, or in relation to, or by reason of:
- 15.1.1 any breach by the Dealer or by its employees of the Dealer's obligations under this Agreement;
 - 15.1.2 any unauthorised act or omission of the Dealer or its employees;
 - 15.1.3 the manner in which the Dealer markets the Software or any services related to it;
 - 15.1.4 the supply by the Dealer of any products, software or services for use in conjunction with, or in relation to, the Software;
 - 15.1.5 (if translated by or for the Dealer) the manner in which the Marketing Materials or the User Documentation (or both) are translated; and
 - 15.1.6 any claim made against RTSW by an End User as a result of RTSW exercising its rights under Clause 4.10.

16. Warranties and Liability

- 16.1 The Dealer acknowledges that the Software is complex and that the Software may have certain defects when delivered. The Dealer agrees that RTSW's sole liability, and the Dealer's sole remedy if there is any bug, fault or error in any copy of the Software is to accept the return of that copy if rejected by the End User in accordance with the End User Licence and to refund to the Dealer the price paid by the Dealer to RTSW for the licence of that copy.
- 16.2 Without prejudice to Clause 16.1, but subject to Clauses 16.3 and 16.5, RTSW's total liability to the Dealer, whether in contract, tort (including negligence) or otherwise will:
- 16.2.1 in relation of any claim by an End User in respect of any defect, error, bug, or deficiency in the Software, not exceed the price paid by the Dealer to RTSW for the licence for that End User; and
 - 16.2.2 in aggregate, in respect of all claims arising in a Year of this Agreement, in connection with the Software and RTSW's performance or non-performance of this Agreement, whether in contract, or tort (including negligence) or arising in any other way, not exceed the total Charges paid by the Dealer to RTSW in that Year of this Agreement.
- 16.3 Despite anything else contained in this Agreement (except Clause 16.5), RTSW will not be liable to the Dealer for any loss of profits, loss of savings, loss of use, loss of business, loss of opportunity, loss or spoiling of data, loss of contracts, in any case whether direct or indirect, or for any indirect or consequential loss, whether arising from negligence, or breach of contract, or in any other way, even if RTSW had been advised of, or knew of, the likelihood of that loss or type of loss arising.
- 16.4 Because of the uncertainty of future events and circumstances RTSW does

not guarantee that its forecasts, projections, advice, recommendations or the contents of any report, presentation or other document will be achievable, and the Dealer acknowledges that RTSW gives the same to address specific circumstances at the time. All information which RTSW supplies is supplied in good faith, but the accuracy and completeness of any information obtained from, or based on, information obtained from the Dealer or any End User or any third party is not warranted by RTSW. It is not within the scope of RTSW's obligations to enquire as to, or to verify, the accuracy or completeness of that information.

- 16.4 The Dealer acknowledges that the limitations of and exclusions on RTSW's liability in this Agreement are reasonable in the light of RTSW's insurance arrangements and that RTSW is willing to accept a higher limitation on its liability provided it is able to obtain full insurance cover for its liabilities and the Dealer pays the costs of obtaining and maintaining any increased cover.
- 16.5 Nothing in this Agreement limits or excludes RTSW's liability for death or personal injury caused by its negligence or for fraud.
- 16.6 The Software has been developed for use with the Equipment. RTSW will not be liable for any failure of the Software to operate with any hardware, software, or operating system except the Equipment or for any degradation in performance or reduction in functionality caused by the use of the Software with any other equipment, software or operating system.
- 16.7 RTSW will not be liable under any warranty or any other provision of this Agreement to the extent that any failure of the Software to comply with any warranty, or to the extent that any error, defect, bug or deficiency in the Software, or RTSW's failure to correct or delay in correcting it, results from the Dealer not having complied with its obligations under this Agreement, or from any other act or omission on the Dealer's part, or on the part of any third party. In particular, RTSW will not be liable if any modification has been made to any of the Software by anyone except RTSW.
- 16.8 RTSW will not be liable under any warranty or under any other provision of this Agreement to the extent that any loss or damage is caused by: the Dealer's failure to implement or distribute, or the Dealer's delay in implementing or distributing, any Error Correction or Update that would have remedied or mitigated the effects of any Error, defect, bug or deficiency in the Software.
- 16.9 Because of the nature of software, RTSW does not warrant that the Software will be error free or that it will run without interruption, or that every error, defect, bug or deficiency can be or will be corrected.
- 16.10 The express undertakings and warranties given by RTSW in this Agreement are in lieu of all warranties, conditions, terms, undertakings and obligations on the part of RTSW implied by statute, common law, custom, trade usage, course of dealing or in any other way. All of these are, to the extent permitted by law, excluded.
- 16.11 The Dealer warrants that it has not been induced to enter into this Agreement by any representation or by any warranty (whether oral, or in writing) except those specifically set out in this Agreement as warranties. The Dealer waives all claims for breach of any warranty and all claims for any misrepresentation, (negligent or of any other kind, unless made by

RTSW fraudulently) which is not specifically set out in this Agreement as a warranty.

17. Notices

All notices to be given under this Agreement must be in writing and be sent to the address or fax number of the intended recipient set out in this Agreement or any other address or fax number which the intended recipient may designate by notice given in accordance with the provisions of this Clause 17. Any notice may be delivered personally, or by first class pre-paid letter, or by fax, and will be deemed to have been served: if by hand, when delivered; if sent by first class post, 48 hours after posting; and if by fax, when despatched, provided the sender holds written confirmation automatically produced by the sender's fax machine of error free and complete transmission of that fax to the intended recipient's fax number.

18. General

18.1 Amendments and Entire Agreement

This Agreement supersedes all earlier agreements, arrangements and understandings between the parties in respect of its subject matter, and constitutes the complete agreement between them relating to that subject matter. No addition to, or modification of, any provision of this Agreement will be binding on either party unless recorded in writing and signed by a duly authorised representative of each of them.

18.2 Remedies not exclusive

Except as stated to the contrary in this Agreement, no right, power or remedy conferred on, or reserved to, either party is exclusive of any other right, power or remedy available to it, and each of those rights, powers, and remedies is cumulative.

18.3 No waiver

No failure or delay by either party in enforcing its rights under this Agreement, or at law or in equity will prejudice or restrict those rights. No waiver of any right will operate as a waiver of any other or later right or breach.

18.4 Severability

If any part of this Agreement is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of this Agreement will not be affected.

18.5 Further Assurance

18.5.1 Each party will do, execute and perform such further acts, things, deeds and documents as may from time to time be required to give full legal and practical effect to this Agreement.

18.5.2 Each party will use all reasonable endeavours at its own cost to ensure that any necessary third parties will do, execute and perform such further acts, things, documents and things as may from time to time be required to give full legal and practical effect to this Agreement.

18.6 Delays

Despite anything else contained in this Agreement, RTSW will not be liable for any delay in performing or failure to perform its obligations caused by circumstances beyond its control (including, without limitation, any act or omission on the Dealer's or any End User's part or on the part of any third party, and any bug, defect, error, fault or deficiency in any software or data not provided by RTSW or developed by or on behalf of the Dealer or any End User, or in any equipment), and RTSW will be granted a reasonable extension of time for the performance of its obligations.

18.7 **Law**

This Agreement and its validity are governed by, and this Agreement is to be construed in accordance with, the laws of England. The Dealer agrees to submit to the jurisdiction of the English Courts or any other courts of RTSW's choosing. Where the Dealer is outside the jurisdiction of the English Courts, the Dealer's address for service in England is set out in the Schedule.

18.8 **Assignment**

The Dealer may not assign, or transfer, or sub-contract this Agreement or any of its rights (including sub-licensing the right to distribute the Software) or any of the Dealer's obligations under this Agreement, whether in whole or in part, without first obtaining RTSW's written consent.

THE SCHEDULE

The Software

All RT Software products as detailed on the Dealer Application Form, and in each case any later release or version supplied by RTSW to the Dealer

The Commencement Date

The Minimum Period 1 year beginning on the Commencement Date

The Territory

First-Line Support

The provision of a telephone help desk during the local working hours, manned by trained technical staff to resolve technical issues raised by End Users in connection with the Software.

Support Services (supplied by RTSW)

- a) the provision of a telephone help desk during Service Hours to receive reports of Errors in the Software from the Dealer;
- b) the use of reasonable endeavours to analyse reports of Errors in the Software and to provide to the Dealer Error Corrections, either in a modification to or a new release or version of the Software, at RTSW's discretion; and
- c) the provision of Updates to the Dealer.

The Charges

- a) this section intentionally left blank.
- b) the price payable per licence of the Software set out in the Price List when RTSW accepts the Dealer's order less the discount set out below;
- c) in return for the Support Services, an annual support charge as set out in the Price List less the discount set out below, payable when RTSW accepts the Dealer's order and on each anniversary of that date; and
- d) in return for Consultancy Services, charges set out in the Price List less the discount set out below or, if no charges appear in the price list, RTSW's standard charges applicable at the date of invoice, payable monthly.

The Payment Terms

The Dealer will pay RTSW in pounds sterling by direct transfer to RTSW's nominated bank account, and that payment must be received within 30 days after the date of RTSW's invoice except as stated to the contrary elsewhere in this Agreement.

Dealer Discount

- a) twenty (20%) percent in the case of each indefinite licence of any of the Software sold to an End User by the Dealer;
- b) twenty (20%) percent in the case of the first year's licence fee for each annual licence of any of the Software sold to an End User by the Dealer;
- c) ten (10%) percent in the case of the second and each later year's licence fee for each annual licence of any of the Software sold to an End User by the Dealer;
- d) ten (10%) percent in the case all support charges for each copy of any of the Software supported by the Dealer;
- e) ten (10%) percent in the case of the charges for consultancy in the Price List.

The Trade Marks

RTSW corporate and product logos.