



# Software Licensee Agreement

Document Number PSS002 V2.4

Issued 24<sup>th</sup> Jan 2008

## **This Software Licence Agreement is made between:-**

**PROVEN SOFTWARE SOLUTIONS LIMITED** whose trading office is at 5, Weill Road, Aylesbury. BUCKS. HP21 9RH ("PSS"); and The Company as specified in the Software Licensee Schedule Document Number PSS004

### **1. Introduction**

- 1.1 PSS maintains a database of standard software code ("Database") that is offered to third parties under licence, to be used on a generic basis in their own products in return for payment of a fee.
- 1.2 The Licensee is either a manufacturer and seller of electrical equipment, which incorporates software as part of its design, or is a business that develops software on behalf of third parties.
- 1.3 PSS has agreed to provide the Licensee with certain code ("Software") from its Database as set out in the Schedule, for incorporation in a specific product ("the Product") and for onward sale to third parties on the terms and conditions in this agreement.

### **2. Definitions**

- 2.1 Unless the context requires otherwise the terms set out below will have the following meanings:
  - 2.1.1 "Database" means the standard database of proprietary software maintained and made available by PSS;
  - 2.1.2 "Documentation" has the meaning given to it in Clause 3 below;
  - 2.1.3 "Fee" means the fee to be paid by the Licensee;
  - 2.1.4 "Intellectual Property Rights" ("IPR") will mean any patent, copyright, trade mark, design right or other form of similar protection; any application for such protection; and know how;
  - 2.1.5 "Licence" means the sub-licence to be granted to the Licensee by PSS from the Software Owner, for the purposes of integrating the Software into a Product.
  - 2.1.6 "Product" means the specific product family (i.e.; product variants that make up one product family) in which the Software is to be incorporated as set out in the Software Licensee Schedule;
  - 2.1.7 "Proven Software" means that the Software has been guaranteed by the Software Owner in accordance with the statements and/or results given in the Software Supplier Schedule.
  - 2.1.8 "Software" means the source code set out in the Software Supplier Schedule ;
  - 2.1.9 "Software Owner" means the owner of the intellectual property rights in the Software.



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## **3. Supply of Software**

- 3.1 In consideration of the payment of a Fee, PSS agrees to supply the Licensee with the Software and to grant a sub-licence to enable the Software to be incorporated into the Product and for those Products to be sold to on-going customers on the terms and conditions set out in this Agreement.
- 3.2 PSS will provide the Software in machine-readable code and will also provide information, software, materials, and documentation in the form of datasheets and user guides to accompany the Software ("Documentation").

## **4. Grant of Licence to Licensee**

- 4.1 The Software Owner is and will remain the absolute owner of all Intellectual Property Rights in the Software and has licensed PSS to supply Software on its behalf. PSS hereby grants the Licensee a 5-year, non-exclusive personal and non-transferable (without the prior written permission of PSS) Licence to integrate the Software into a larger software module, or to embed the Software in an end Product produced by the Licensee and declared in writing in the Software Licensee Schedule and to then sell such Products to end consumers without infringing the obligations of the Licence. A Licence is only granted per Product and further Licences will need to be purchased for other product lines.
- 4.2 Subject to Clause 4.3 below, the Licensee will be the owner of any modifications to the Software.
- 4.3 The Licensee will not be entitled to use the trade marks or name of the Software Owner or PSS in any way whatsoever, and will not be entitled to sell the Software other than for the sole purpose set out in Clause 4.1 above. The Licensee must not pass off the Software with any modifications to the Software as their own work. The Licensee will not be entitled to sell or license the Software with modifications to any third party unless incorporated as part of the Products.
- 4.4 If the Licensee is in breach of its Licence then any rights granted to that Licensee including the right to integrate the Software into any Third Party products in development would cease with immediate effect. The Licensee will not be required to remove the Software from any Products in which the Software has already been incorporated and are in production and sold.
- 4.5 PSS will act on behalf of the Software Owner as its agent in the enforcement of this Clause. The identity of the Licensee will not be disclosed to the Software Owner unless the Licensee is in breach of the Licence.

## **5. Fee**

- 5.1. The Licence Fee will be paid in full by the Licensee prior to the use of the Software.
- 5.2. The Fee is exclusive of VAT. VAT or local sales taxes will be added if applicable.



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## 6. Guarantee

- 6.1. PSS guarantees that each item of Software is Proven Software in accordance with the statements given in the Software Supplier Schedule.
- 6.2. Subject to the payment of the Fee and the fulfilment of the its obligations set out in Clause 7 below, then PSS will allow the Licensee the right of quiet enjoyment in the Software.

## 7. Licensee's Obligations

- 7.1. The Licensee agrees as follows:
  - 7.1.1. Not to use the Software or any translation modification adaptation, or variation of such Software, in respect of any other product other than as specified in the Contract Schedule without additional approval of PSS and payment of a further Fee;
  - 7.1.2. Not to provide the Software or make it available to third parties in any way whatsoever other than being incorporated into the Product in whole or in part in any form without the prior permission of PSS. If it is found that this Clause has been breached then not limiting any other right PSS may have under this Agreement the Licensee will have to pay for the Fee in respect of the unauthorised third party and any costs incurred by PSS in investigating the breach of contract;
  - 7.1.3. To keep detailed records of each Product in which the Software has been incorporated and to pay the Fee to PSS accordingly;
  - 7.1.4. The Licensee will allow PSS or its authorised agent on reasonable notice and in working hours access to books and records in order to conduct an audit to ensure that the Licensee is complying with the terms of the Licence.
  - 7.1.5. The Licensee will establish and maintain reasonable security measures and procedures to provide for the safe custody of any of the Software, the Documentation or any other information that is provided to the Licensee, and to prevent unauthorised access to that Software or Documentation.
  - 7.1.6. Without in any way limiting the exclusion set out in Clause 8.1, if any bugs or errata become known to the Licensee then they will inform PSS at their earliest convenience and PSS will investigate the errors or errata with the Software Owner.
- 7.2. PSS reserves the right to change the payment procedure with at least 14 days' prior written notice to the Licensee.

## 8. Warranty

- 8.1. PSS provides the Software to the Licensee without any warranties whatsoever and in particular, the Software is not guaranteed to be free of errors or bugs. If any such bugs or errata become known to the Software Owner then the Software Owner will inform PSS at their earliest convenience, and PSS will inform the Licensee within the same time frame.



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- 8.2 If PSS are given any manufacturer warranties or guarantees, bug reports or errata then they will pass such warranties or guarantees, bug reports or errata to the Licensee wherever possible.
- 8.3 Without limiting either Clause 8.1 above, or Clause 4.1, the Licensee should be aware that some Software may implement a function that is owned by a third party and that the Licensee may be required to pay a royalty payment in respect of that functionality, which is separate from rights granted under this Agreement. The Software Owner must inform PSS of any such third party functionality and PSS will pass such information to the Licensee.
- 8.4 The Licensee must assume all risks in the use of such Software and make all necessary tests before deploying the Software in its own products.
- 8.5 PSS is under no obligation to fix any errors or bugs or to update or upgrade the Software and PSS is under no obligation to provide any support or maintenance in respect of the Software once it has been delivered to the Licensee ex works.
- 8.6 PSS disclaim all warranties, whether express or implied including but not limited to the implied warranties of satisfactory quality, fitness for a particular purpose even if that purpose was made known, or any rights to title in respect of any intellectual property rights.
- 8.7 In the event that the Product fails, then PSS will not be liable for the Licensee's losses in any way whatsoever but in the very unlikely event that the Licensee should bring a successful claim against PSS then if they are required to make any payments to such Licensee, then the liability payable under this Agreement for any event or series of events will be limited to the Fee paid under this Agreement.
- 8.8 Subject to Clause 7.1.7, neither party will be liable to the other or any third party for any acts and/or omissions including that of its employees or sub-contractors for any special indirect or consequential loss, damage to, injury costs or expenses of any kind including without limitation loss of profit even if such a loss was reasonably foreseeable or the other party had advised the that party of the possibility of incurring such loss.

## **9. Confidentiality**

- 9.1 Each party will keep all details of this Agreement and any subsequent discussions and negotiations leading up to the signing of this Agreement, confidential. This will not apply if the details were known to that party before entering into the Agreement, were told by a third party who was not under an obligation of confidentiality, or where the details are required to be disclosed by law or statute. The obligations accepted by the parties under the terms of any NDA signed will continue to apply in accordance with its terms.



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## 10. Termination

10.1 This Licence will remain in effect for a period of 5 years from the date of this Agreement. The Licensee will have the option to extend this licence for a further period after the 5 years have elapsed. This option may be exercised by giving PSS three months' prior written notice before the end of the 5-year period.

10.2 Either party will be entitled to terminate this Agreement on immediate notice if:

10.2.1 The other is in breach of this Agreement to a material extent and if it is capable of being put right fails to repair the breach within 14 days of being notified of the breach; or

10.2.2 The other party is bankrupt, in voluntary arrangement, in liquidation or receivership or has ceased business or threatened to cease business.

## 11. Effects of Termination

11.1. On termination of this agreement for whatever reason then each party as appropriate

11.1.1. Will be entitled to payment of all agreed and undisputed Fees properly due prior to the date of termination;

11.1.2. Will immediately destroy the Software, Documentation and all other records not already incorporated into the Products and inform PSS in writing that all Software, Documentation and all other records have been destroyed. PSS will be entitled to make necessary checks on the Licensee to ensure that this has taken place;

11.1.3. Will immediately cease to use the Intellectual Property Rights if any.

11.2 Any Licence granted to the Licensee will cease immediately. The Licensee will be entitled to continue to deploy the Software in any existing Products but not to make any further developments to or with the Software without making a further payment of a Licence Fee and signing an extension to this Agreement.

## 12. Export Control

12.1 In addition to the Licensee's undertakings set out in Clause 7 above, the Licensee further understands that it must comply with all applicable national and international export control regulations. If the Licensee intends to re-export dual-use items or make them available to a third party in another country (and subject to the terms and conditions of this Agreement) then the Licensee must comply with all relevant export control laws and regulations. This also includes the transmission of Products or technology by electronic media, fax, or by telephone to a destination outside the European Community.

## 13. Publicity

13.1 PSS will be allowed to refer to the Licensee in publicity provided that PSS first obtains the Licensee's written consent



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## 14. Nature of the Agreement

- 14.1. If either party chooses not to take up any right of action at any time then this will not prevent that party from taking action on the same or similar point at another time.
- 14.2. Either party may assign or sub-contract this Agreement at any time provided that that party will remain responsible and will continue with its obligations under this Agreement at all times.
- 14.3. In the event that any of these terms or conditions should prove to be unenforceable, invalid or unlawful to any extent, then such term, condition or provision will be severed from the remaining terms, conditions and provisions and the remaining terms will continue to be valid to the fullest extent permitted by law.
- 14.4. Subject to Clause 9.1 and the NDA referred to in that Clause which will continue in accordance with its terms, this Agreement together with Documentation and Contract Schedule constitutes the entire agreement between PSS and the Licensee. Each party confirms that it has not relied upon any representation not recorded in this Agreement as an inducement to enter into this Agreement. No variation to the Agreement will be valid unless made in writing and signed by the Licensee and a Director for PSS.
- 14.5. The operation of the Contracts (Rights of Third Parties) Act 1999 is expressly excluded from this Agreement.

## 15. Law and Jurisdiction

- 15.1. At first instance the parties will attempt in good faith to resolve any disputes or claims that may arise through both parties negotiating at a senior level.
- 15.2. If such negotiations should fail to resolve the dispute, then both parties will attempt to resolve the problem through the use of alternative dispute resolution techniques such as mediation, conciliation, mini-trials or other such methods, and the parties will seek assistance from the Centre for Dispute Resolution of London "CEDR", for advice on the suitable methods and personnel with which to conduct the proceedings.
- 15.3. This Agreement will be governed by and subject to English Law and will come under the exclusive jurisdiction of the English Courts.

## 16. Notices

- 16.1 Notices must be given in writing either by hand, by first class post, or by facsimile transmission provided that there is a transmission sheet showing that the transmission was properly transmitted to the correct number. Post will be judged to have arrived 2 days from date of posting. Notices sent by other means will be received immediately. Notices given under Clause 5.5 may be given by e-mail.