



# Software Supplier Agreement

Document Number PSS001 V3.4

Issued 11<sup>th</sup> December 2007

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

**PROVEN SOFTWARE SOLUTIONS LIMITED**, whose registered office is at 5, Weill Road, Aylesbury. Bucks. HP21 9RH ("PSS"); and The "Software Supplier", as specified in the Software Supplier Schedule Document Number PSS003.

### **1. Introduction**

- 1.1 The Software Supplier is 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 or is a silicon vendor who develops software for their devices.
- 1.2 PSS owns a database of standard software code ("Database") that is offered for sale to third parties, either directly or via its distribution partner Ismosys, to be used on a generic basis in their own products in return for payment of a fee ("Third Party Licensees").
- 1.3 The Software Supplier has agreed to provide PSS with certain code ("Software") to be included in the Database for onward sale, either directly or via its distribution partner Ismosys, to third parties as set out in the Schedule to this Agreement, or as may be added to with additional Schedules from time to time all subject to the following terms and conditions.

### **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 owned and maintained by PSS and maintained by Ismosys;
  - 2.1.2 "Documentation" has the meaning given to it in Clause 6 below;
  - 2.1.3 "Fee" means the fee to be paid to the Software Supplier by the Third Party Licensees through PSS;
  - 2.1.4 "Intellectual Property Rights" 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 licence to be granted to the Third Party Licensees by the Software Supplier through PSS;
  - 2.1.6 "Proven Software Status" means that the Software has been guaranteed by the Software Supplier in accordance with the statements and/or results given in the Contract Schedule.
  - 2.1.7 "Software" means the Software owned by the Software Supplier and set out in the Contract Schedule(s);
  - 2.1.8 "Product" means the specific product family (i.e.; product variants that make up one product family) in which the Software is incorporated;
  - 2.1.9 "Third Party Licensees" has the meaning given to it in Clause 1.2 above;



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## 3. Grant of Licence to PSS

- 3.1. The Software Supplier is and will remain the absolute owner of all original Intellectual Property Rights in the Software, but not any modification that is made, conceived, created, developed, written, devised or acquired by the Third Party Licensee under any Licence granted to it by PSS as a result of this Agreement.
- 3.2. In consideration of PSS and Ismosys agreeing to protect the Software and to collect all Fees on behalf of the Software Supplier, the Software Supplier grants PSS and Ismosys the following:
  - 3.2.1. The right to list the Software for sale within the Database unless or until the Software Supplier terminates this Agreement;
  - 3.2.2. The right to sell licenses of the Software to the Third Party licensees;
  - 3.2.3. The right to grant non-exclusive, non-transferable (without the written permission of the Software Supplier through PSS) and perpetual licences to Third Party Licensees provided that they have fulfilled the requirements of the Licence as set out below;

## 4. Right to Grant Sub-Licences

- 4.1. The Software Supplier hereby agrees to the granting of a perpetual, non-exclusive personal and non-transferable Licence (without the prior written permission of the Software Supplier through PSS) to the Third Party Licensees. The Third Party Licensee will be granted the further right to modify the Software and to integrate the Software into a larger software module, or to embed the Software in an end product produced by the Third Party Licensee and declared in writing to PSS by part number, and to then sell such products to end consumers without infringing the obligations of the Licence. A Licence is only granted per Third Party product and further Licences will need to be purchased per product.
- 4.2. In consideration of the granting of this Third Party Licence, PSS will collect a Fee that will be paid to the Software Supplier as set out in Clause 5 below.
- 4.3. The Third Party Licensees will not be entitled to use the trade marks or name of the Software Supplier in any way whatsoever, and will not be entitled to use the Software or sell the Software other than for the sole purpose set out in Clause 4.1 above.
- 4.4. If the Third Party Licensee is in breach of its Licence then any rights granted to that Third Party Licensee including the right to incorporate the Software into any Third Party products will cease with immediate effect.
- 4.5. PSS will act on behalf of the Software Supplier as its agent, but at the cost of the Software Supplier, in the enforcement of this Clause



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## **5. Fee**

- 5.1. PSS will pay the Software Supplier a Fee based on a percentage of every item of Software sold to the Third Party Licensees.
- 5.2. This Fee will be collected and paid monthly after the end of the month directly to the Software Supplier's Account. A schedule showing the breakdown of the Fee will be provided.
- 5.3. VAT will be added to any Fee if applicable

## **6. Software Supplier's Obligations**

- 6.1. The Software Supplier guarantees that each item of Software meets one of the Proven Software Status criteria stated in the Schedule.
- 6.2. The Software Supplier will provide the Software in machine-readable code and will also provide information, software, materials, and documentation to accompany the Software ("Documentation").
- 6.3. Although the Software Supplier gives no warranties or guarantees to the Third Party Licensees, the Software Supplier will use reasonable endeavours to ensure that the Software has no known bugs or errata that are not fully documented within the Documentation, and if any such bugs or errata become known to the Software Supplier then they will inform PSS at their earliest convenience.
- 6.4. The Software Supplier warrants to PSS that none of the information, software or materials supplied to PSS will infringe the Intellectual Property Rights of any third party and the Software Supplier will indemnify PSS against costs that PSS may incur as a result of a breach of this warranty, and if any such infringement becomes known to the Software Supplier then they will inform PSS at their earliest convenience.
- 6.5. If any of the information, software or materials supplied to PSS includes Intellectual Property owned by a third party, the Third Party Licensee may be required to pay a royalty payment in respect of that functionality, which is separate from rights granted to it under the Third Party Licence Agreement. The Software Supplier must inform PSS of such Intellectual Property Rights and the Software Supplier will indemnify PSS against costs that PSS may incur as a result of a breach of this clause.
- 6.6. Subject to the payment of the Fee and the fulfilment of the PSS obligations set out in Clause 7 below, then the Software Supplier will allow PSS the right of deal with the Software as it sees fit under this Agreement and will not seek to interfere with the Database or interfere with the way that PSS runs its business in any way whatsoever.



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## 7. PSS' Obligations

### 7.1. PSS agrees as follows:

- 7.1.1. To pay the Software Supplier the Fee as set out in the Fee Schedule by the 30th of each month following the relevant month in accordance with the procedure set out below and to maintain proper and accurate records of each sale;
  - 7.1.2. To keep detailed records of each Third Party Licensee. Details of the identity of Third Party Licensees will only be disclosed to the Software Suppliers in the event of an infringement of the Licence. In this event PSS will inform the Software Supplier of the details of the infringement by the Third Party Licensee including the identity of the Third Party Licensee and PSS agrees to assist in the enforcement of the Software Supplier's rights in the Software against the Third Party Licensee without PSS bearing any direct costs including legal costs, provided that PSS will not be responsible or liable for any such infringement by the Third Party Licensee.
  - 7.1.3. That PSS and Ismosys will establish and maintain reasonable security measures and procedures to provide for the safe custody of any of the Software or any of the Software Supplier's information that is in the possession of PSS and Ismosys in the same way as if it was their own proprietary information, and to prevent unauthorised access to that Software or information in accordance with recognised industry practices as discussed with the Software Supplier at the time of signing the Agreement.
- 7.2 The Software Supplier will automatically qualify for a PSS Account. Once the Software Supplier has provided the Software to PSS, PSS will inform the Software Supplier in writing that an account has been opened and will give the Software Supplier a unique reference number for the Software. Any changes to the account by either party must be made in writing, giving advance notice of any changes that may affect the payment of the monies owed to the Software Supplier. Any failure to inform PSS of such changes will be the responsibility of the Software Supplier.
- 7.3 PSS reserves the right to change the payment procedure set out in Clause 7.2 above at any time on written notice to the Software Supplier, provided that this clause will not allow PSS to change the payment procedure in such a way that they either create an unreasonable delay in the time that payments are made or do not make any payment due under Clause 5.



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## 8. Warranty

- 8.1 The Software Supplier provides the Software to PSS without any warranties whatsoever and in particular without limiting Clause 6.3, that the Software is not guaranteed to be free of errors or bugs.
- 8.2 Third Party Licensees must assume all risks in the use of such Software and make all necessary tests before deploying the Software in its own products.
- 8.3 The Software Supplier is under no obligation to fix any errors or bugs or to update or upgrade the Software and the Software Supplier is under no obligation to provide any support or maintenance in respect of the Software once it has been delivered to PSS ex works, unless agreed otherwise in the Contract Schedule.
- 8.4 The Software Supplier and 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 under the Software Suppliers' intellectual property rights.
- 8.5 In the event that the Product fails, then the Software Supplier will not be liable for the Third Party Licensee's losses in any way whatsoever but in the very unlikely event that a Third Party Licensee should bring a successful claim against the Software Supplier then if the Software Supplier is 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 by the Third Party Licensee, and this Clause will be written into the Third Party Licence Agreement.
- 8.6 Subject to Clause 8.7 below, 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.
- 8.7 The Software Supplier will ensure that any Software will be provided in a format which is free of viruses, worms, Trojan horses or any such like event that may cause harm to the embedded code, and in the event that the embedded code is proven to have been corrupted or suffered loss of any data or for the total loss of the database, then PSS (or Ismosys) will be entitled to seek compensation from the Software Supplier for any direct and foreseeable losses suffered by PSS (or Ismosys), provided that PSS (and Ismosys) has maintained the Software in the form supplied to PSS by the Software Supplier.



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- 8.8 Except in respect of death and personal injury where liability cannot be limited, PSS's liability for negligence under this Agreement or in respect of any other claim not excluded under this Clause 8 will in any event be limited to £5000.
- 8.9 If any bugs or errata become known to the PSS then they will inform the Software Supplier at their earliest convenience, and the Software Supplier will investigate the errors or errata and report back to PSS.

## 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.

## 10. Termination

- 10.1. Either party may terminate this Agreement by giving the other at least 90 days' prior written notice.
- 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 fails to repair the breach within 14 days of being notified of the breach (if it is capable of being repaired); 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 return the Software and all other records to the other party, or if instructed otherwise will arrange for their immediate destruction;
  - 11.1.3. will immediately cease to use the Intellectual Property Rights if any;
- 11.2 Any licence granted to PSS will cease immediately, but any sub-licence granted properly to any Third Party Licensee and for which the Software Supplier has received payment in cleared funds will continue in accordance with its terms.
- 11.3 The Software Supplier will not under any circumstances be granted the right to a copy of any Software that has been modified by a Third Party Licensee. In the



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11.4 event that a Licence to a Third Party Licensee is terminated for any reason then that modified Software will be destroyed.

## 12. Publicity

12.1 PSS will be allowed to refer to the Software's functionality in its publicity or materials but will not disclose the identity of the Software Supplier in publicity unless PSS first obtains the Software Supplier's prior written consent.

12.2 On written permission of PSS which will only be given at their absolute discretion, the Software Supplier will be entitled to refer to the use of its Software generally and its sale to the Third Party Licensee in respect of an area of industry without actually mentioning the name or any way of identifying the Third Party Licensee.

## 13. Nature of the Agreement

13.1 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.

13.2 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.

13.3 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.

13.4 Subject to Clause 9.1 Agreement together with Documentation and Contract Schedule constitutes the entire agreement between PSS and the Software Supplier. 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 Software Supplier and a Director for PSS.

13.5 The operation of the Contracts (Rights of Third Parties) Act 1999 is expressly excluded from this Agreement.

## 14. Storage

14.1 A master copy of the Software and all Documentation will be held by PSS and Ismosys in a secure fire safe.



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## 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 7.2 may be given by e-mail.