

**DATALINX COMPUTER SYSTEMS LIMITED**

**TERMS AND CONDITIONS OF BUSINESS**

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## SECTION 1 – GENERAL TERMS

### 1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in these terms and conditions.

**Contract:** the Customer's purchase order and Datalinx's acceptance of it under condition 3.

**Customer:** the person, firm or company who purchases Services from Datalinx.

**Customer's Contract Manager:** the Customer's manager for the Contract appointed in accordance with condition 5.1(a).

**Datalinx:** Datalinx Computer Systems Limited.

**Datalinx's Contract Manager:** Datalinx's manager for the Contract, appointed in accordance with condition 4.3.

**'Delivery'** means provision of the systems at the authorised location, the program part of the systems being recorded on storage media properly compatible with the processor and other data processing equipment connected to that processor.

**Delivery Date:** a date for delivery set out in the Order Form.

**Deliverables:** all goods, Services and materials supplied and/or developed by Datalinx in relation to the Contract in any media, including, without limitation, computer programs, data, diagrams, reports and specifications (including drafts).

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trade marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered, and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**Pre-existing Materials:** materials which existed before the commencement of the Contract.

**'Processor'** means a computer or any other data processing device which is capable of directly or indirectly interpreting and executing the data definitions and procedural instructions which form part of the systems.

**Order Form:** the Order Form attached describing the Contract and setting out the estimated timetable (including Delivery Dates) and responsibilities for the provision of the Services by Datalinx in accordance with the Contract.

**Services:** the services to be provided by Datalinx under the Contract, including any goods or Deliverables where appropriate.

**VAT:** value added tax chargeable under English law for the time being and any similar additional tax. **'The systems'** means all reference manuals, instruction manuals, training manuals, operating manuals, documentation, books, guides, information sheets and other materials, or any part thereof, necessary for setting up and using the procedures, methods and techniques which are defined in the system specifications and includes the program part

of the system and any copies of the systems or any part thereof and any modifications thereto or derivatives therefrom.

'The program part of the systems' means one or more sets of data definitions and procedural instructions or any part thereof recorded on punched cards, paper tape, magnetic tape, magnetic disk or any other storage media of any one or more sets of data definitions and procedural instructions or any part thereof written or printed on one or more documents, which can be directly or indirectly interpreted and executed by a processor and which control the operation of the processor so that it will carry out the procedures which are stated in the systems specification to be carried out by the processor.

'The authorised location' means the place of business of the Customer set out in the Order Form hereto.

1.2 Headings do not affect the interpretation of these conditions.

## 2. APPLICATION OF CONDITIONS

2.1 These conditions shall:

- (a) apply to and be incorporated in the Contract and all other contracts between the parties; and
- (b) prevail over any inconsistent terms or conditions contained in, or referred to in, the Customer's purchase order, confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing.

2.2 Any variation of the Contract shall be in writing and signed by or on behalf of the parties.

## 3. EFFECT OF PURCHASE ORDER

The Customer's purchase order constitutes an offer by the Customer to purchase the Services specified in it on these conditions; accordingly, the execution and return of the acknowledgement copy of the purchase order form by Datalinx, or Datalinx's commencement or execution of work pursuant to the purchase order, shall establish a contract for the supply and purchase of those Services on these conditions. The Customer's standard terms and conditions (if any) attached to, enclosed with, or referred to in the purchase order shall not govern the Contract.

## 4. DATALINX'S OBLIGATIONS

4.1 Datalinx shall use reasonable endeavours to manage and complete the Contract, and to deliver the Deliverables to the Customer, in accordance in all material respects with the Order Form.

4.2 Datalinx shall use reasonable endeavours to meet the performance dates specified in the Order Form, but any such dates shall be estimates only and time shall not be of the essence of the Contract.

4.3 Datalinx shall appoint Datalinx's Contract Manager who shall have authority to contractually bind Datalinx on all matters relating to the Contract. Datalinx shall use reasonable endeavours to ensure that the same person acts as Datalinx's Contract Manager throughout the Contract, but may replace him from time to time where reasonably necessary in the interests of Datalinx's business.

## 5. CUSTOMER'S OBLIGATIONS

### 5.1 The Customer shall:

- (a) co-operate with Datalinx in all matters relating to the Contract and appoint the Customer's Contract Manager, who shall have the authority to contractually bind the Customer on matters relating to the Contract;
- (b) provide in a timely manner such access to the Customer's premises and data, and such office accommodation and other facilities, as is requested by Datalinx;
- (c) provide in a timely manner such information as Datalinx may request, and ensure that such information is accurate in all material respects; and
- (d) be responsible (at its own cost) for preparing the relevant premises for the supply of the Services.

5.2 If Datalinx's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer or the Customer's agents, sub-contractors or employees, the Customer shall be liable to pay to Datalinx on demand all reasonable costs, charges or losses sustained or incurred by it (including, without limitation, any direct or indirect consequential losses, loss of profit and loss of reputation, loss or damage to property, injury to or death of any person and loss of opportunity to deploy resources elsewhere), subject to Datalinx confirming such costs, charges and losses to the Customer in writing.

5.3 The Customer shall not, without the prior written consent of Datalinx, at any time from the date of the Contract to the expiry of one year after the completion of the Services, solicit or entice away from Datalinx or employ or attempt to employ any person who is, or has been, engaged as an employee or sub-contractor of Datalinx.

5.4 Any consent given by Datalinx in accordance with condition 5.3 shall be subject to the Customer paying to Datalinx a sum equivalent to 20% of the then current annual remuneration of Datalinx's employee or sub-contractor or, if higher, 20% of the annual remuneration to be paid by the Customer to such employee or sub-contractor.

## 6. CHANGE CONTROL

6.1 The Customer's Contract Manager and Datalinx's Contract Manager shall communicate on a regular basis to discuss matters relating to the Contract. If either party wishes to change the scope of the Services, it shall submit details of the requested change to the other in writing.

6.2 If either party requests a change to the scope or execution of the Services, Datalinx shall, within a reasonable time, provide a written estimate to the Customer of:

- (a) the likely time required to implement the change;
- (b) any variations to Datalinx's charges arising from the change;
- (c) the likely effect of the change on the Order Form; and
- (d) any other impact of the change on the terms of the Contract.

6.3 If Datalinx requests a change to the scope of the Services, the Customer shall not unreasonably withhold or delay consent to it.

6.4 If the Customer wishes Datalinx to proceed with the change, Datalinx has no obligation to do so unless and until the parties have agreed in writing on the necessary variations to its charges, the Order Form and any other relevant terms of the Contract to take account of the change.

## 7. CHARGES AND PAYMENT

7.1 Unless otherwise stated in consideration of the annual services to be supplied the Customer will pay Datalinx the charges specified in the order form, annually in advance. The charges specified may be modified by Datalinx upon not less than 60 days notice in writing to the Customer.

7.2 Where the Services are provided on a time-and-materials basis:

- (a) the charges payable for the Services shall be calculated in accordance with Datalinx's standard daily fee rates as amended from time to time;
- (b) Datalinx's standard daily fee rates are calculated on the basis of an seven-hour day worked between 9.00 am and 5.00 pm on weekdays allowing one hour per day of break time (excluding weekends and public holidays);
- (c) Datalinx shall be entitled to charge at an overtime rate of 1.5 times the normal rate for part days and for time worked by members of the Contract team outside the hours referred to in condition 7.2(b) on a pro-rata basis;
- (d) Datalinx shall ensure that all members of the Contract team complete time sheets recording time spent on the Contract, and Datalinx shall use such time sheets to calculate the charges covered by each monthly invoice referred to in condition 7.2(e); and
- (e) Datalinx shall invoice the Customer monthly in arrears for its charges for time, expenses and materials (together with VAT where appropriate) for the month concerned, calculated as provided in this condition 7. Each invoice shall set out the time spent by each member of the Contract team and provide a detailed breakdown of any expenses and materials, accompanied by the relevant receipts.

7.3 Where goods and/or Services are provided for a fixed price the total price shall be the amount set out in the Order Form. The total price shall be paid to Datalinx (without

deduction or set-off) in instalments as set out in the Order Form on its achieving the corresponding Delivery Date. On achieving a Delivery Date, Datalinx shall invoice the Customer for the charges that are then payable, together with expenses and the costs of materials (and VAT, where appropriate), calculated as provided in condition 7.4.

7.4 Any price contained in the Order Form excludes:

- (a) the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the Contract team in connection with the Services, and the cost of any materials or services reasonably and properly provided by third parties required by Datalinx for the supply of the Services. Such expenses, materials and third party services shall be invoiced by Datalinx at cost; and
- (b) VAT, which Datalinx shall add to its invoices at the appropriate rate.

7.5 The Customer shall pay each invoice submitted to it by Datalinx in full, and in cleared funds, within 30 days of receipt.

7.6 Without prejudice to any other right or remedy that Datalinx may have, if the Customer fails to pay Datalinx on the due date Datalinx may:

- (a) charge interest on such sum from the due date for payment at the annual rate of 4 % above the base lending rate from time to time of Lloyds Bank Plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment. Datalinx may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and
- (b) suspend all Services until payment has been made in full.

7.7 Time for payment shall be of the essence of the Contract.

7.8 All payments payable to Datalinx under the Contract shall become due immediately on termination of the Contract, despite any other provision. This condition is without prejudice to any right to claim for interest under the law, or any such right under the Contract.

7.9 Datalinx may, without prejudice to any other rights it may have, set off any liability of the Customer to Datalinx against any liability of Datalinx to the Customer.

## 8. INTELLECTUAL PROPERTY RIGHTS

8.1 All Intellectual Property Rights and all other rights in the Deliverables shall be owned by Datalinx. Datalinx hereby licenses all such rights to the Customer on the terms of the License set out in Section 5 of these Terms and Conditions. If Datalinx terminates the Contract under condition 11.1, this licence will automatically terminate.

8.2 The Customer acknowledges that the Customer's use of rights in Pre-existing Materials is conditional on Datalinx obtaining a written end-user licence (or sub-licence) of such



rights from the relevant licensor or licensors on such terms as will entitle Datalinx to license such rights to the Customer.

**9. CONFIDENTIALITY AND DATALINX'S PROPERTY**

9.1 The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by Datalinx or its agents, and any other confidential information concerning Datalinx's business or its products which the Customer may obtain. The Customer shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know it for the purpose of discharging the Customer's obligations to Datalinx, and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the Customer.

9.2 Unless sold to the Customer under this Contract, all materials, equipment and tools, drawings, specifications and data supplied by Datalinx to the Customer shall at all times be and remain the exclusive property of Datalinx, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to Datalinx, and shall not be disposed of or used other than in accordance with Datalinx's written instructions or authorisation.

9.3 This condition 9 shall survive termination of the Contract, however arising.

9.4 Risk of loss or damage to goods sold shall pass to the Customer at the time of delivery of goods sold. Ownership of goods sold shall pass to the Customer only on receipt by Datalinx of the price in full (and VAT and other taxes and duties payable to Datalinx) for those goods and all other sums then due from the Customer under all contracts. If the Customer is overdue in making any payment to Datalinx or becomes insolvent, is unable to pay its debts, ceases to trade, has a receiver appointed over the whole or any part of its assets, has an administrator appointed, enters into any composition with creditors generally, is wound up (other than for the purpose of a bona fide scheme of solvent reconstruction) or any step is taken, whether by the Customer or any other person, towards any of the foregoing events, or Datalinx reasonably expects any such event, Datalinx may cancel the Contract, suspend or cancel any deliveries, and/or Datalinx shall be entitled upon demand to the immediate return of all goods sold which remain in the ownership of Datalinx and the Customer irrevocably authorises Datalinx to enter any premises to recover them. Recovery of goods sold shall not of itself discharge the Customer's liability to pay the whole of the price due for them.

**10. LIMITATION OF LIABILITY**

10.1 The following provisions set out the entire financial liability of Datalinx (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

- (a) any breach of the Contract;

- (b) any use made by the Customer of the Services, the Deliverables or any part of them; and
- (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.

10.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

10.3 Nothing in these conditions excludes the liability of Datalinx:

- (a) for death or personal injury caused by Datalinx's negligence; or
- (b) for fraud or fraudulent misrepresentation.

10.4 Subject to condition 10.2 and condition 10.3:

(a) Datalinx shall not be liable, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation or otherwise for:

- (i) loss of profits; or
- (ii) loss of business; or
- (iii) depletion of goodwill or similar losses; or
- (iv) loss of anticipated savings; or
- (v) loss of goods; or
- (vi) loss of contract; or
- (vii) loss of use; or
- (viii) loss or corruption of data or information; or
- (ix) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.

(b) Datalinx's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the price paid for Services in the previous Contract quarter.

10.5 The Customer shall indemnify Datalinx against any loss or damage or injury whatsoever sustained by Datalinx employees or agents or caused to Datalinx property as a result of the act or omission of the Customer, its employees, agents, visitors or contractors which occur whilst Datalinx employees or agents are working at the authorised location in any way in obligations under this Contract.

## 11. TERMINATION

11.1 This Agreement shall continue in force from year to year until determined by not less than three months notice in writing, prior to the anniversary date, given by either party to the other. Datalinx reserves the right to refuse to maintain the systems and to

terminate this Agreement if modifications are made to any of the systems other than by authorised Datalinx staff or with the express written consent of Datalinx. Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the Contract without liability to the other if:

- (a) the other party commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
- (b) an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of the other party; or
- (c) an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or
- (d) a receiver is appointed of any of the other party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets; or
- (e) the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way, or becomes bankrupt; or
- (f) the other party ceases, or threatens to cease, to trade; or
- (g) there is a change of control of the other party; or
- (h) the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt; or
- (i) if the renewal fee is not paid three months before each anniversary of the Contract.

11.2 Termination of the Contract, however arising, shall not affect or prejudice the accrued rights of the parties as at termination or the continuation of any provision expressly stated to survive, or implicitly surviving, termination.

## 12. FORCE MAJEURE

Datalinx shall have no liability to the Customer under the Contract if it is prevented from, or delayed in, performing its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Datalinx or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of Datalinx or sub-contractors.

### 13. WAIVER

13.1 A waiver of any right under the Contract is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.

13.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

### 14. SEVERANCE

14.1 If any provision of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

14.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

### 15. STATUS OF PRE-CONTRACTUAL STATEMENTS

Each of the parties acknowledges and agrees that in entering into the Contract it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this agreement or not) relating to the subject matter of this agreement other than as expressly set out in the Contract.

### 16. ASSIGNMENT

16.1 The Customer shall not, without the prior written consent of Datalinx, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

16.2 Datalinx may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

### 17. GENERAL

#### NO PARTNERSHIP OR AGENCY

Nothing in the Contract is intended to or shall operate to create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including but not limited to the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

#### THIRD PARTY RIGHTS

The Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by, anyone else.

#### NOTICES

Any notice under the Contract shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address as set out in the Contract, or such other address as may have been notified by that party for such purposes, or sent by fax to the other party's fax number as set out in the Contract. A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not during business hours, at 9.00 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by fax shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

#### GOVERNING LAW AND JURISDICTION

The Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the law of England.

## SECTION 2 – TELEPHONE SUPPORT

The software to be supported is listed in the Order Form.

18. The purpose of the telephone software support function is to provide:-
  - 18.1 An ongoing relationship between Datalinx and the Customer
  - 18.2 To help and assist in the running of the system.
  - 18.3 To advise on any future development to the Customer's existing computer systems or any new system being considered. However, any systems analysis or programming additions will be quoted for under a separate agreement.
  - 18.4 To supply day to day advice and guidance in the operation of the software
  - 18.5 To advise the Customer how to differentiate between hardware, software and other system related problems.
19. The service will be supplied between Monday and Friday 9.00a.m. to 5.00p.m., excluding Public and Company holidays.
20. The service is subject to:-
  - 20.1 All modifications to the application software by the Customer's staff only to be made with the knowledge and agreement of a Director of Datalinx Computer Systems Limited.
  - 20.2 Any software to which modifications have been made by persons other than Datalinx or the Customer's staff will not be supported under this agreement.
  - 20.3 Where appropriate the Customer will maintain an ongoing relationship with the hardware Datalinx in terms of hardware support enabling Datalinx to refer problems which cannot be attributed to the application software to that Datalinx.
  - 20.4 The Customer will not undertake the use of further system software released from the hardware Datalinx without prior consultation with Datalinx. In so far as it will affect the

installed software, the Customer will not upgrade the hardware without prior consultation with Datalinx.

21. Telephone calls will normally be non-chargeable for any support function as outlined in clause 18 and 19 above.

### SECTION 3 – HARDWARE MAINTENANCE

22. This service is for the supply of “on” or “off site” hardware maintenance to the equipment detailed in The Order Form

22.1 The off-site maintenance and repair service is from receipt of goods, at Datalinx, and is inclusive of labour and materials.

22.2 The on-site maintenance service, is a next day service inclusive of travel, labour and materials

23. The annual charge detailed in the Order Form is for the service and any parts deemed necessary by Datalinx to require replacement, it is exclusive of postage which will be charged extra.

24. Datalinx will have the right to assign the service and will normally assign the service to the hardware manufacturer. The Customer may not assign or transfer this agreement without the written consent of Datalinx.

24.1 Where Datalinx assigns this service the terms and conditions will be limited to those published by the manufacturer.

25. The service will be supplied between Monday and Friday 9.00a.m. to 5.00p.m., excluding Public and Company holidays.

25.1 This Agreement does not cover repairs or replacements necessitated by:

- Accidental, fire or water damage
- Misuse or abuse
- Unauthorised adjustment
- Natural disasters such as floods, earthquakes, lightning.
- Fair wear and tear

25.2 Datalinx reserves the right to charge for service visits made at the Customers request where no fault is found with the equipment under contract, or where the fault was found to be caused by user damage.



## SECTION 4 – SOFTWARE MAINTENANCE

### 26. Introduction

The Customer has been licensed to use the computer systems brief particulars of which are set out in the Order Form

27 Datalinx has agreed to provide software maintenance services to the Customer, in respect of such systems and operating software, on the terms and conditions of this Agreement with effect from the date specified in The Order Form (hereinafter called the Service Commencement Date).

### 28. Access

To enable obligation by Datalinx under this Agreement to be expeditiously and properly carried out the Customer will provide suitable access free of charge to the processor and other necessary data processing equipment connected to the processor situate at the authorised location at reasonable times and for reasonable periods.

### 29. Maintenance Service

Datalinx agrees with the Customer to provide on the service commencement date and thereafter during the continuance in force of this Agreement service as follows:-

#### 29.1 The Customer Hot-Line Support

Duly qualified staff to be available by telephone to provide a software help desk during the hours 09:00 – 17:00 Monday to Friday, excluding Public and Company holidays to deal with queries associated with software listed in the Order Form.

Telephone calls from the Customer will receive an immediate call logging number from Datalinx.

#### 29.2 Call Status

Datalinx Hot-Line Support will acknowledge a call within 45 minutes and agree a plan to resolve the issue together with an indication of the overall response time. Datalinx will keep the customer informed, of fix and/or work-around progress.

29.3 Where calls relate to the interface to the Customer's database environment, or similar issues where the cause cannot be diagnosed as being clearly caused by the

supported software. The company will use best endeavours to assist the Customer in resolving the problem.

#### 29.4 New Versions

Datalinx will if Datalinx deems it appropriate deliver to the Customer each enhanced version of the systems or part thereof produced by Datalinx or its licensor during the continuance of this Agreement and will ensure its satisfactory working.

#### 29.5 Other Manufacturers' Software

Datalinx will provide for such support as Datalinx considers to be necessary within the constraints of the service offered to Datalinx by that manufacturer.

### 30. Additions to Maintenance Service

The maintenance service to be provided by Datalinx as described in this agreement will not cover the following which will, if undertaken, be charged at Datalinx normal daily fee rate for the time being in force:-

#### 30.1 Site Visits

Datalinx will make available duly qualified staff at the authorised location of the Customer, within a reasonable time from receipt of a specific request or systems fault report from the Customer, to deal with queries and problems relating to the systems and to ensure that the systems perform in accordance with the systems specification, provided that the visit is considered necessary in the professional opinion of Datalinx.

#### 30.2 Development Work

Being work caused by modifications made specifically for the Customer and necessary to deliver to the Customer each enhanced version of the systems and all further modifications or enhancements or the provision of new features and facilities requested by the Customer and other than those already available in new standard versions of the systems.

#### 30.3 Other Modifications

Being modification work made necessary by mandatory legislation.

#### 30.4 Recovery

Being all work necessary to restore or rebuild Customer Data Files or the Manufacturer's Operating Software or any part thereof consequent upon corruption by the processor or other data processing equipment connected to the processor or engineers attending the data processing equipment or incorrect modification or use of the systems by any person

or failure by the Customer to incorporate enhanced versions of the systems or the Manufacturer's Operating Software when they are issued.

### 30.5 Implementation

Being training of employees or other agents of the Customer or assistance with operation of the systems and data processing equipment or planning or implementation of the systems or initialisation or formatting of disks other than the answering of queries or problems by telephone as part of the service for the identification and correction of faults.

### 30.6 Systems Extension

Being assistance with the installation or implementation of additional data processing equipment or installation or implementation of additional systems or regeneration of Manufacturer's current or new versions of Operating Software other than as necessary to ensure that the system

## SECTION 5 – END USER LICENSE

This licence agreement (**Licence**) is a legal agreement between you (**Licensee** or **you**) and Datalinx Computer Systems Limited incorporated and registered in England and Wales with Company number 2478100 whose registered office is at Linx House, 149 London Road, East Grinstead, West Sussex, RH19 1ET (**Licensor** or **we**) for this Datalinx software product (**Software**), which includes computer software, any data supplied with it, the associated media, printed materials and online or electronic documentation (**Documentation**).

### 1. GRANT AND SCOPE OF LICENCE

1.1 In consideration of your agreeing to abide by the terms in this agreement and the payment of the annual licence fee or Contract Price (which is part of the price the User pays its supplier for this package), the Licensor hereby grants to you a non-exclusive, non-transferable licence to use the Software and the Documentation in the UK on the terms of this Licence on an annually renewable basis for an annual fee.

1.2 You may:

- (a) download, install and use the Software for your private or internal business purposes only, either (as agreed between the parties):
  - (i) if the Licence is a single-user licence or the Software is for single use, on one CPU; or
  - (ii) if the Licence is a multi-user or network licence, for the number of concurrent users agreed between you and us;
- (b) transfer the Software from one computer to another provided it is used on only one computer at any one time;
- (c) make up to three copies of the Software for back-up purposes only, provided that this is necessary for the activities permitted under condition 1.2a;
- (d) receive and use any free supplementary software code or update of the Software incorporating "patches" and corrections of errors as may be provided by the Licensor from time to time;
- (e) use any Documentation in support of the use permitted under condition 1.2 and make up to three copies of the Documentation as are reasonably necessary for its lawful use.

1.3 Duration

The duration of your Licence to use the Software initially lasts for one year from the date we send the Software to your supplier. The software is installed on your computer which may be prior to the date on which you choose to "go live". Thereafter the Licence will be renewed on each anniversary of the supply to your supplier for another year, so long as the appropriate fee is paid. Subject to paragraph 8.1, if you use the Software after the renewal date, you indicate your acceptance of the renewal of your Licence for twelve months from the renewal date and are bound to make payment of the current annual license fee charged by the Licensor.

## **2. LICENSEE'S UNDERTAKINGS**

2.1 Except as expressly set out in this Licence or as permitted by any local law, you undertake:

- (a) not to copy the Software or Documentation except where such copying is incidental to normal use of the Software or where it is necessary for the purpose of back-up or operational security;
- (b) not to rent, lease, sub-license, loan, translate, merge, adapt, or modify the Software or Documentation;
- (c) not to make alterations to, or modifications of, the whole or any part of the Software nor permit the Software or any part of it to be combined with, or become incorporated in, any other programs;
- (d) not to disassemble, decompile, reverse engineer or create derivative works based on the whole, or any part, of the Software nor attempt to do any such things except to the extent that (by virtue of section 296A of the Copyright, Designs and Patents Act 1988) such actions cannot be prohibited because they are essential for the purpose of achieving inter-operability of the Software with another software program, and provided that the information obtained by you during such activities:
  - (i) is used only for the purpose of achieving inter-operability of the Software with another software program; and
  - (ii) is not unnecessarily disclosed or communicated to any third party without the Licensor's prior written consent; and
  - (iii) is not used to create any software which is substantially similar to the Software;
- (e) to keep all copies of the Software secure and to maintain accurate and up-to-date records of the number and locations of all copies of the Software;
- (f) to supervise and control use of the Software and ensure that your employees and representatives use the Software in accordance with the terms of this Licence;
- (g) to include the copyright notice of the Licensor on all entire and partial copies you make of the Software on any medium.

2.2 You must permit the Licensor and his representatives, at all reasonable times and on reasonable advance notice, to inspect and have access to any premises at which the Software or the Documentation is being kept or used, to the computer equipment located

there, and to any records kept pursuant to this Licence, for the purpose of ensuring that you are complying with the terms of this Licence.

### 3. SUPPORT

If you register the purchase of the Software pursuant to condition 4 below, the Datalinx Business Partner or Reseller or/Distributor from whom the Software was purchased or the Licensor's technical support staff will endeavour to answer any queries which you, as the original registered purchaser, may have regarding the use or application of the Software during the Warranty Period. For support please email [support@datalinx.co.uk](mailto:support@datalinx.co.uk)

The Licensor's registration scheme provides a number of benefits including access to Software updates and the support services referred to in condition 3 above. To register the purchase of the Software, you must complete the online registration at the time of first loading the software.

### 4. INTELLECTUAL PROPERTY RIGHTS

4.1 You acknowledge that all intellectual property rights in the Software and the Documentation throughout the world belong to the Licensor, that rights in the Software are licensed (not sold) to you, and that you have no rights in, or to, the Software or the Documentation other than the right to use them in accordance with the terms of this Licence.

4.2 You acknowledge that you have no right to have access to the Software in source code form or in unlocked coding or with comments.

4.3 The integrity of the Software is protected by technical protection measures (**TPM**) so that the intellectual property rights, including copyright, in the Software of the Licensor are not misappropriated. You must not attempt in any way to remove or circumvent such TPM, nor to apply, manufacture, import, distribute, sell, let for hire, offer, expose or advertise for sale for hire or have in your possession for private or commercial purposes, any means whose sole reasonable purpose is to facilitate the unauthorised removal or circumvention of such TPM.

### 5. WARRANTY

5.1 The Licensor warrants that:

(a) the medium on which the Software is stored and distributed is at the time it is supplied, and will be for the period of 45 days thereafter (**Warranty Period**), free from defects in design, material and workmanship under normal use. If a defect in the medium occurs during the Warranty Period, the Licensor will replace it free of charge if you return it to the Licensor with proof of purchase and (so far as you are able) a documented example of such defect or error;

(b) during the Warranty Period, the Software will, when properly used, perform substantially in accordance with the functions described in the Documentation (provided

that the Software is properly used on the computer and with the operating system for which it was designed as referred to in the accompanying documentation), and the Documentation correctly describes the operation of the Software in all material respects;

(c) it has tested the Software for viruses using commercially available virus-checking software, consistent with current industry practice.

5.2 You acknowledge that the Software has not been developed to meet your individual requirements and that it is therefore your responsibility to ensure that the facilities and functions of the Software as described in the Documentation meet your requirements.

5.3 You acknowledge that the Software may not be free of errors or bugs and you agree that the existence of any minor errors shall not constitute a breach of this Licence.

5.4 If, within the Warranty Period, you notify the Licensor in writing of any defect or fault in the Software in consequence of which it fails to perform substantially in accordance with the Documentation, and such defect or fault does not result from you having amended the Software or used it in contravention of the terms of this Licence, the Licensor will, at its sole option, repair or replace the Software, provided that you make available all the information that may be necessary to assist the Licensor in resolving the defect or fault, including sufficient information to enable the Licensor to recreate the defect or fault.

## **6. LICENSOR'S LIABILITY**

6.1 Nothing in this Licence shall limit or exclude the liability of either party for death or personal injury resulting from negligence, fraud, fraudulent misrepresentation, or deliberate personal repudiatory breaches of this agreement.

6.2 Subject to condition 6.1, the Licensor's liability for losses suffered by you arising out of or in connection with this agreement (including any liability for the acts or omissions of its employees, agents and subcontractors), whether arising in contract, tort (including negligence), misrepresentation or otherwise, shall be limited as follows, even if such losses result from the Licensor's deliberate personal repudiatory breach of this agreement:

- (a) loss of income;
- (b) loss of business profits or contracts;
- (c) business interruption;
- (d) loss of the use of money or anticipated savings;
- (e) loss of information;
- (f) loss of opportunity, goodwill or reputation;
- (g) loss of, damage to or corruption of data; or
- (h) any indirect or consequential loss or damage of any kind howsoever arising and whether caused by tort (including negligence), breach of contract or otherwise;



provided that this condition 6.2 shall not prevent claims for loss of or damage to your tangible property that fall within the terms of condition 6 or any other claims for direct financial loss that are not excluded by any of categories (a) to (h) inclusive of this condition 6.2.

6.3 Subject to condition 6.1 and condition 6.2, the Licensor's maximum aggregate liability under or in connection with this Licence, or any collateral contract, whether in contract, tort (including negligence) or otherwise, shall be limited to a sum equal to 100 % of the Licence Fee.

6.4 Subject to condition 6.1 and condition 6.2 the Licensor's liability for infringement of third party intellectual property rights shall be limited to breaches of rights subsisting in the UK.

6.5 This Licence sets out the full extent of the Licensor's obligations and liabilities in respect of the supply of the Software and Documentation. In particular, there are no conditions, warranties, representations or other terms, express or implied, that are binding on the Licensor except as specifically stated in this Licence. Any condition, warranty, representation or other term concerning the supply of the Software and Documentation which might otherwise be implied into or incorporated in this Licence, or any collateral contract, whether by statute, common law or otherwise, is hereby excluded to the fullest extent permitted by law.

## **7. TERMINATION**

7.1 The Licensor may terminate this Licence immediately on written notice to you if:

- (a) you commit a material or persistent breach of this Licence which you fail to remedy (if remediable) within 14 days after the service on you of written notice requiring you to do so;
- (b) a petition for a bankruptcy order to be made against you has been presented to the court; or
- (c) the Licensee (where it is a company) becomes insolvent or unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), enters into liquidation, whether voluntary or compulsory (other than for reasons of bona fide amalgamation or reconstruction), passes a resolution for its winding-up, has a receiver or administrator manager, trustee, liquidator or similar officer appointed over the whole or any part of its assets, makes any composition or arrangement with its creditors or takes or suffers any similar action in consequence of its debt, or becomes unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986);or
- (d) you fail to pay the annual renewal fee on demand.

7.2 Upon termination for any reason:

- (a) all rights granted to you under this Licence shall cease;
- (b) you must cease all activities authorised by this Licence; and



(c) you must immediately delete or remove the Software from all computer equipment in your possession and immediately destroy or return to the Licensor (at the Licensor's option) all copies of the Software then in your possession, custody or control and, in the case of destruction, certify to the Licensor that you have done so.

## 8. TRANSFER OF RIGHTS AND OBLIGATIONS

8.1 This Licence is binding on you and us and on our respective successors and assigns.

8.2 You may not transfer, assign, charge or otherwise dispose of this Licence, or any of your rights or obligations arising under it, without our prior written consent.

8.3 We may transfer, assign, charge, sub-contract or otherwise dispose of this Licence, or any of our rights or obligations arising under it, at any time during the term of the Licence.

## 9. NOTICES

All notices given by you to the Licensor must be given to Datalinx Computer Systems Limited at Linx House, 149 London Road, East Grinstead, West Sussex, RH19 1ET. The Licensor may give notice to you at either the e-mail or postal address you provided to when purchasing the Software. Notice will be deemed received and properly served 24 hours after an e-mail is sent, or three days after the date of posting of any letter. In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and, in the case of an e-mail, that such e-mail was sent to the specified e-mail address of the addressee.

## 10. EVENTS OUTSIDE THE LICENSOR'S CONTROL

10.1 The Licensor will not be liable or responsible for any failure to perform, or delay in performance of, any of his obligations under this Licence that is caused by an event outside his reasonable control (**Force Majeure Event**).

10.2 A Force Majeure Event includes any act, event, non-happening, omission or accident beyond our reasonable control and includes in particular (without limitation) the following:

- (a) strikes, lock-outs or other industrial action;
- (b) civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war;
- (c) fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster;
- (d) impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport;
- (e) impossibility of the use of public or private telecommunications networks;
- (f) the acts, decrees, legislation, regulations or restrictions of any government.

10.3 The Licensor's performance under this Licence is deemed to be suspended for the period that the Force Majeure Event continues, and he will have an extension of time for performance for the duration of that period. We will use our reasonable endeavours to bring the Force Majeure Event to a close or to find a solution by which our obligations under this Licence may be performed despite the Force Majeure Event.

## **11. WAIVER**

11.1 If we fail, at any time during the term of this Licence, to insist upon strict performance of any of your obligations under this Licence, or if we fail to exercise any of the rights or remedies to which we are entitled under this Licence, this shall not constitute a waiver of such rights or remedies and shall not relieve you from compliance with such obligations.

11.2 A waiver by us of any default shall not constitute a waiver of any subsequent default.

11.3 No waiver by us of any of these terms and conditions shall be effective unless it is expressly stated to be a waiver and is communicated to you in writing.

## **12. SEVERABILITY**

If any of the terms of this Licence are determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such term, condition or provision will to that extent be severed from the remaining terms, conditions and provisions which will continue to be valid to the fullest extent permitted by law.

## **13. ENTIRE AGREEMENT**

13.1 This Licence and any document expressly referred to in it represents the entire agreement between us in relation to the licensing of the Software and Documentation and supersedes any prior agreement, understanding or arrangement between us, whether oral or in writing.

13.2 We each acknowledge that, in entering into this Licence, neither of us has relied on any representation, undertaking or promise given by the other or be implied from anything said or written in negotiations between us prior to entering into this Licence except as expressly stated in this Licence.

13.3 Neither of us shall have any remedy in respect of any untrue statement made by the other, whether orally or in writing, prior to the date we entered into this Licence (unless such untrue statement was made fraudulently) and the other party's only remedy shall be for breach of contract as provided in these terms and conditions.

**14. LAW AND JURISDICTION**

This Licence, its subject matter or its formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law and submitted to the non-exclusive jurisdiction of the English courts.