DATED

(1) << >>

(2) << >>

JOINT SOFTWARE DEVELOPMENT AGREEMENT
THIS AGREEMENT is made the day of

BETWEEN:

(1) <<Name of Software Owner>> a company registered in <<Country of Registration>> under number <<Company Registration number>> whose registered office is at <<Registered office>> (“the Software Owner”)

(2) <<Name of Developer>> a company registered in <<Country of Registration>> under number <<Company Registration number>> whose registered office is at <<Registered office>> (“the Developer”)

WHEREAS:

(1) The Developer wishes to develop and market certain computer software intended to <<insert description or function>>, the outline specification for which is contained in Schedule 1 (the ‘Software’).

(2) The Developer requires to use existing software owned by the Software Owner known as <<insert name of software product>> specified in Schedule 1 (the ‘Source Software’) and requires the Software Owner’s support and co-operation for the purpose of developing the Software, the parties have agreed to enter into this joint development upon the terms and subject to the conditions of this Agreement.

IT IS AGREED as follows:

1. Definitions
   In this Agreement, the following words and expressions shall have the following meanings:

   “Acceptance” or “Accepted” acceptance by both parties of the Software which has successfully passed the agreed acceptance tests specified and approved in the SAD;

   “Development Timetable” the timetable forming Schedule 2 to this Agreement, upon which development of the Software is proposed to take place (including the regular meetings to be held and the time to be spent by each party) as the same may be amended from time to time by mutual agreement between the parties;

   “Development Work” the development required to produce the Software based upon the Specification;

   “Distribution Agreement” the distribution agreement entered into between the parties dated <<...>>;

   “Equipment” the computer hardware equipment specified in Schedule 1 upon which the Software is to operate when developed;

   “SAD” the Software Acceptance Document agreed between the Software Owner and the Developer as the acceptance tests to be passed by the Software;
“Software” the meaning ascribed to it in Recital (1) above including any operator manuals relating thereto, to be developed by the Developer with the assistance and co-operation of the Software Owner in accordance with this Agreement and shall include any enhancements and modifications made thereto;

“Source Software” the meaning ascribed to it in Recital (2) being the software owned by the Software Owner upon which the Software to be developed in accordance with this Agreement shall be based;

“Specification” the detailed specification document for development of the Software prepared by the Developer with the co-operation of the Software Owner and based upon the outline specification contained in Schedule 1.

2. Delivery of Source Software

Upon execution of this Agreement and receipt by the Software Owner of the sum of £ from the Developer, the Software Owner shall deliver to the Developer the Source Software in a form suitable for the parties to carry out the Development Work. The Source Software is received, held and used by the Developer strictly in accordance with the provisions of this Agreement.

3. Preparation and Approval of Documents

3.1 The Developer and the Software Owner shall prepare the Specification, the SAD and the Development Timetable.

3.2 The parties shall raise any amendments or recommendations to any of the above documents in writing or at a meeting to be held between the parties. All meetings shall be minuted. The party proposing the amendment shall amend the appropriate document accordingly and deliver the amended document to the other party for approval.

3.3 Upon approval of the documents by both parties the Developer shall commence the Development Work with the assistance and co-operation of the Software Owner in accordance with the Development Timetable.

4. Testing and Acceptance of Software

4.1 Upon completion of the Development Work or at any appropriate stage thereof as the case may be, the parties shall run the agreed acceptance tests specified in the SAD.

4.2 Upon passing the agreed acceptance tests to the satisfaction of both parties, the Software or that part of it (the ‘module’), if not the whole, shall be deemed Accepted for marketing in terms of the Distribution Agreement and the Developer shall with the assistance of the Software Owner, prepare the necessary manuals sufficient to enable a reasonably skilled operator to install and use the Software.

4.3 In the event that the Software or any ‘module’ fails to pass the tests prescribed in the SAD, the parties may make such adjustments or modifications as may be necessary to enable the Software to be resettled.
4.4 In the event that the parties fail to complete the development in timely fashion or in the event that the Software repeatedly fails to pass Acceptance testing, either party shall be entitled to terminate this Agreement by reason of such failure in which event clause 2 shall be forfeit to the Software Owner in accordance with the terms and costs and expenses incurred by the Software Owner in co-operating with the parties mutually agree to extend the completion date of the Software unless the case may be, allow further modifications and revisions.

5. **Meetings and Change Control Committee**

5.1 The Developer and Software Owner shall undertake to hold regular meetings at such times and venues as shall be agreed between the parties. Such meetings shall be attended by a nominated person representing each of the parties who, unless otherwise agreed, shall comprise the Change Control Committee.

5.2 Any proposed change, alteration or modification to the Specification, SAD or Development Timetable following their approval or to the development shall be submitted to the Change Control Committee. Any such change, amendment or alteration submitted shall specify any effect the same shall have on price, marketing and timescale.

5.3 Any such change, amendment or alteration requires the written approval of both parties prior to implementation.

5.4 Any enhancement or modification to the Software proposed by either party at any time shall require the written approval of both parties.

6. **Cost of Development**

Subject to the provisions of clauses 2 and 7, the cost relating to development of the Software shall be shared between the parties in the same proportion as the royalties specified in the Distribution Agreement. Any additional contribution required to be given by the Software Owner beyond that specified in the Development Timetable shall be charged on a time and materials basis or as otherwise agreed between the parties.

7. **Payment upon Acceptance**

7.1 Upon Acceptance of the Software the Developer shall pay to the Software Owner the sum of £ as payment for the licence to reproduce unlimited copies of the Source Software or that part of it which is required to market the Software under the Agreement.

7.2 Where the payment of any sum due or invoice or any part thereof is not made, the Software Owner or in law, shall be entitled to charge interest (as well before as after judgment) on the outstanding amount at the rate of % per year above the base rate for the time being in force from the due date or the date of invoice until the outstanding sum is paid.

7.3 In addition to the above, should the Developer fail to make any payment when due under this Agreement or in law, the Software Owner shall at the Software Owner's absolute discretion and without prejudice to this Agreement and the Distribution Agreement without prejudice to any rights or remedies which may be available to the Software Owner in accordance with these terms and conditions, this Agreement may be terminated and the Software may be released.
7.4 All payments under this Agreement are exclusive of VAT, which shall be payable by the Developer in the same manner for the time being prescribed by law against submission of a valid tax invoice.

8. Software Support

In the event that the Developer requires the Software Owner to assist in the support of the Software following completion, the same shall be performed by the Software Owner upon its acceptance in writing and upon the terms and conditions to be agreed between the parties or specified in the Distribution Agreement.

9. Copyright, Patents, Trade Marks and Intellectual Property Rights

9.1 The Developer acknowledges that any and all of the trade marks, trade names, copyrights, patents and other intellectual property rights created, developed, embodied in or in connection with the Source Software or any enhancement or other software provided by the Software Owner shall be and remain the sole property of the Software Owner. The Developer shall not during or at any time after the completion, expiry or termination of this Agreement in any way question or dispute the ownership by the Software Owner of any such rights.

9.2 The parties agree that they shall jointly own the copyright in and to the Software developed under this Agreement including any enhancements and modifications made thereon that part of it which is owned by the Software Owner as described in clause 9.1 above.

10. Obligations and Warranties

10.1 The Software Owner shall:

10.1.1 make available to the Developer, free of charge, such computer facilities (including but not limited to unhindered access to the Equipment), office and secretarial services as are necessary to enable the Developer to carry out its obligations under this Agreement;

10.1.2 ensure that its employees and other independent contractors cooperate reasonably with the Developer and its employees in carrying out the Development Work;

10.1.3 promptly furnish the Developer with such information and documents as it may reasonably request for the proper performance of its obligations under this Agreement.

10.2 The Developer warrants that:

10.2.1 it is entitled to enter into this Agreement and that it is entitled to grant the Licence in accordance with this Agreement;

10.2.2 the Development Work shall:

10.2.2.1 perform substantially in accordance with the Specification on the Equipment, minor interruptions and errors excluded;

10.2.2.2 be date compliant and neither the performance nor functionality of the Development Work is affected by dates prior to, during and after the year 2000; and

10.2.2.3 support the introduction of the Euro currency unit;
10.2.3 the manuals (referred to in clause 4.2) will provide users with adequate instructions to enable them to operate and use the Equipment effectively;

10.2.4 the Development Work will be carried out in a professional manner conforming to best industry practices.

10.3 The Developer shall not be liable under clause 10.2.2 if a failure to meet the warranties set out in that clause is caused by:

10.3.1 software other than the Development Work running on the Equipment; or

10.3.2 modifications or customisation made by or on behalf of the Customer to the Development Work without the authorisation of the Developer.

10.4 If the Developer receives a written notice from the Customer identifying a breach of the warranties set out in clause 10.2, or otherwise becomes aware of its failure to comply with the warranties set out in clause 10.2, then the Developer shall, at its own expense, promptly remedy such breach or failure provided that the Developer shall have no liability or obligations under the warranties unless it shall have received written notice of the defect or error within 14 days of such defect or error being discovered.

11. Termination

Notwithstanding anything else contained in it, this agreement may be terminated:

11.1 by the Software Owner forthwith on giving notice in writing to the Developer if:

11.1.1 the Developer shall (or shall threaten to) sell, assign, part with or cease to carry on its business relating to the distribution of the Products; or

11.1.2 the control (as defined for the purposes of Section 416 of the Income and Corporation Taxes Act 1988) of the Developer shall be transferred to any person or persons other than the person or persons in control of the Developer at the date of this Agreement (but the Software Owner shall only be entitled to terminate within the period of 60 days after the Software Owner shall have been notified in writing of the change in control); or

11.2 by either party forthwith on giving notice in writing to the other if:

11.2.1 the other party commits any material or persistent breach of any term of this agreement (or of a breach capable of being remedied) shall have failed, within 30 days after the receipt of a request in writing from such party so to do, to remedy the breach (such request to contain a warning of such party's intention to terminate);

11.2.2 the other party shall have been unable to perform its obligations under this Agreement for periods aggregating 90 consecutive days or for periods aggregating 180 days in any year (but the party entitled to terminate may only terminate within the period of 60 days after the expiration of the said consecutive period or year);

11.2.3 the other party shall have a receiver or administrative receiver appointed over its undertaking or assets or shall pass a resolution for winding up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction shall make an order to that effect or if the
other party shall enter into any voluntary arrangement with its creditors or shall become subject to an administration order.

12. Liability

12.1 Notwithstanding anything else contained in this agreement but subject to clause 12.2 below the Software Owner shall not be liable to the Developer for loss of profits or contracts or any other indirect or consequential loss or damage whether arising from a breach of contract or any other cause of action out of the subject matter of this agreement.

12.2 The Software Owner does not exclude liability for death or personal injury caused by the Software Owner's negligence.

12.3 Except as expressly provided in this agreement no warranty, condition, undertaking, or term, express or implied, statutory or otherwise, as to the condition, quality, performance, merchantability, durability or fitness for purpose of the Source Software is given or assumed by the Software Owner and all such warranties, undertakings and terms are hereby excluded.

13. Indemnities

13.1 The Software Owner shall indemnify the Developer and keep the Developer fully and effectively indemnified against any and all losses, claims, damages, costs, charges, expenses, liabilities, demands, proceedings and actions which the Developer may sustain or incur or which may be brought or established against it by any person and which in any case arise out of or in relation to or by reason of any claim or allegation that any of the Source Software infringes the property of any third party.

13.2 The Developer shall indemnify the Software Owner and keep the Software Owner fully and effectively indemnified against any and all losses, claims, damages, costs, charges, expenses, liabilities, demands, proceedings and actions which the Software Owner may sustain or incur or which may be brought or established against it by any person and which in any case arise out of or in relation to:

13.2.1 the negligent, reckless or wilful misconduct of the Developer in the performance of its obligations in connection with the Source Software;

13.2.2 any unauthorised action or omission of the Developer or its employees;

13.2.3 any breach of any applicable laws or regulations relating to the use of the Source Software by the Developer.

13.3 If any claim is made against either party for which indemnification is sought under this clause, the indemnified party shall consult with the other and, subject to being satisfied, shall co-operate with the other in relation to such claim.


This Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided for in this agreement.
15. **Amendments**

This Agreement may not be amended, supplemented, interpreted, amended, varied or modified except by an instrument in writing signed by a duly authorised officer of each of the parties.

16. **Announcements**

No party shall issue or make any announcement or disclose any information regarding this Agreement or any information that it has obtained from the other party.

17. **Assignment**

17.1 This Agreement is personal to the parties and, subject to clause 17.2 below, neither this Agreement nor any of its rights, licences or obligations under it, may be assigned by either party without the prior written approval of the other party.

17.2 Notwithstanding the foregoing, either party may assign this Agreement to any acquirer of all or of substantially all of that party's equity securities, assets or business relating to the subject matter of this Agreement or to any entity controlled by, that is under common control with a party to this Agreement. Any attempt to contravene this clause will be void and without effect.

18. **Entire Agreement**

This Agreement supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the parties relating to the subject matter of this Agreement. The obligations of the parties under any pre-existing non-disclosure agreement shall remain in full force and effect in so far as there is no conflict between the same. The parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement.

19. **Force Majeure**

[Neither party shall have any liability under or be deemed to be in breach of this Agreement for any delays which result from circumstances beyond the reasonable control of that party. If such circumstances continue for a period of more than <<e.g. 6 months>>, either party may terminate this Agreement by written notice to the other party.]

OR

[Notwithstanding anything contained in this Agreement, neither party shall be liable for any delay in performance of this Agreement if such delay is caused by circumstances beyond the reasonable control (including without limitation any delay caused by any failure by the other party) provided however that any delay caused by a sub-contractor or supplier shall not relieve the party from liability for delays of the sub-contractor or supplier up to the point of delay (the delay (and the likely duration of the delay), the performance of the obligations shall be suspended during the period that the said conditions continued and such party shall be granted an extension of time for performance of the obligations (in which event the rights, remedies and liabilities of each party (in which event the rights, remedies and liabilities of each party) in any other terms of this Agreement shall be conferred and imposed by the]
19.1 any costs arising from such delay shall be borne by the party incurring the same;
19.2 either party may, if such delay continues for more than 10 weeks, terminate this Agreement forthwith giving notice in writing to the other by reason of such termination.

20. Notices
20.1 All notices under this Agreement shall be in writing.
20.2 Notices shall be deemed to have been duly given:
   20.2.1 when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or
   20.2.2 when sent, if sent by e-mail and a successful transmission report or return receipt is generated; or
   20.2.3 on the fifth business day following mailing, if mailed by national ordinary mail;
   20.2.4 on the tenth business day following mailing, if mailed by airmail, in each case addressed to the most recent address, e-mail address, or facsimile number notified to the other party.

21. Schedules
The provisions of Schedules A and B shall form part of this Agreement as if set out here.

22. Severance
If any provision of this Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement, and not in any way affect any other circumstances of or the validity or enforcement of this Agreement.

23. Successors and Assignees
23.1 This agreement shall continue to the benefit of, and be binding upon, the parties and their respective successors and permitted assignees, and references to a party in this Agreement include its successors and permitted assignees.
23.2 In this Agreement references to a person:
   23.2.1 who for the time being is entitled (by assignment, novation or otherwise) to those rights under this Agreement (or any interest in those rights);
   23.2.2 who, as administrator, liquidator or otherwise, is entitled to exercise those rights, and in particular the rights that, under this Agreement include any similar rights to which that person becomes entitled as a result of a novation of this Agreement.
24. **Waiver**

   No delay, neglect or forbearance on the part of either party in enforcing against the other party any term or condition of this Agreement shall either be or be deemed to be a waiver or in any way prejudice that other party under this Agreement. No right, power or remedy in this Agreement is exclusive of any other right, power or remedy available to that party.

25. **Counterparts**

   This Agreement may be executed in any number of counterparts or duplicates, each of which shall be an original. All counterparts or duplicates shall together constitute one and the same agreement.

26. **Time of the Essence**

   Time shall be of the essence in this Agreement as regards any time, date or period mentioned in this agreement or subsequently substituted as a time, date or period by agreement in writing between the parties.

27. **Language**

   This Agreement is made only in the English language. If there is any conflict in the meaning between the English language version of this Agreement and any version or translation of it in any other language, the English language version shall prevail.

28. **Costs and Expenses**

   Each party shall bear its own legal costs and other costs and expenses arising in connection with the drafting, negotiation, execution and registration (if applicable) of this Agreement.

29. **Set-off**

   Where either party has incurred any liability to the other party, whether under this Agreement or otherwise, and whether such liability is liquidated or unliquidated, each party may set off the amount of such liability against any sum that would otherwise be due to the other party under this Agreement.

30. **Third Parties**

   [The parties confirm their intent not to confer any rights on any third parties by virtue of this Agreement and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.]

   OR

   [The parties recognise that this Agreement is intended to benefit and shall so benefit <<insert name of third party>> for the purposes of the Contracts (Rights of Third Parties) Act 1999 and, subject to that, the parties confirm their intent not to confer any rights on any other third parties by virtue of this Agreement.]
31.1.1 either party shall have the right to sue to recover its fees or expenses in any jurisdiction in which the Developer is operating or has assets, and

31.1.2 either party shall have the right to sue for breach of its intellectual property rights (including proprietary information and trade secrets whether in connection with this Agreement or otherwise) in any country where it believes that infringement or a breach of this Agreement is taking place. For the avoidance of doubt, the place of performance of this Agreement is agreed by the parties to be England.

31.2 Each party recognises that the protection of its IPR is vital to its business and may therefore be entitled to injunctive or other equitable relief in order to prevent a breach or threatened breach of IPR.

31.3 With respect to all other disputes which are not IPR related pursuant to clauses 31.1 and 31.2 above and its special rules the following procedures in clauses 31.3 to 31.5 shall apply. Where there is a dispute the aggrieved party shall notify the other party in writing of the nature of the dispute within 5 business days of the dispute arising. A representative from senior management of each of the parties ('representatives') shall meet in person or communicate by telephone within 5 business days of the date of the written notification in order to reach an agreement about the nature of the dispute and the corrective action to be taken by the respective parties. If the representatives shall produce a report and if no agreement is reached on corrective action, then the chief executives of each party shall meet in person or communicate by telephone, to facilitate an agreement within 5 business days. If the dispute cannot be resolved at board level within a further 5 business days, or if the agreed upon completion dates in any written plan of corrective action are exceeded, either party may seek its legal remedies as provided below.

31.4 If the parties cannot resolve a dispute in accordance with the procedure in clause 31.3 above and seek to resolve the dispute or difference amicably by using an Alternative Dispute Resolution ('ADR') procedure acceptable to both parties before pursuing any other remedies available to them. If the parties agree to or participate in the ADR procedure or if the difference or difference is not resolved to the satisfaction of both parties within 90 days after it has arisen, the matter shall be settled in accordance with the procedure below.

31.5 If the parties cannot resolve the dispute by the procedure set out above, the parties shall irrevocably submit to the exclusive jurisdiction of the courts of England and Wales for the hearing and determining any dispute arising out of this Agreement.

31.6 [While the dispute resolution procedure above is in progress and any party has an obligation to make a payment to another party or to allow a credit in respect of such payment, the sum relating to the matter in dispute shall be paid into an interest bearing deposit account to be held in the names of the relevant parties at a clearing bank and such payment shall be a good discharge of the parties' payment obligations under this Agreement. Following resolution of the dispute, whether by mediation or legal proceedings, the sum...
held in such account shall be payable as determined in accordance with the mediation or legal proceedings, and the interest accrued shall be allocated between the parties pro rata according to the split of the principal sum as

OR

[Any dispute which may arise concerning this Agreement shall be determined as follows:

31.7 If the dispute shall be of a technical nature relating to the functions or capabilities of the Licensed Program Materials or any similar or related matters then such a dispute shall be referred for final settlement to an expert nominated jointly by the parties or, failing such nomination within 14 days after either party’s request to the other for such nomination at the request of either party by the President for the time being of the British Computer Society. Such expert shall be deemed to act as an expert and not as an arbitrator. His decision shall (in the absence of clerical or manifest error) be final and binding on the parties and whose costs shall be borne between the parties in equal shares unless he determines that the conduct of either party is such that such party should bear all of such fees.

31.8 In any other case the dispute shall be determined by the High Court of Justice in England and the parties submit to the exclusive jurisdiction of that Court for such purposes.]
IN WITNESS WHEREOF this Agreement has been duly executed the day and year first mentioned above.

SIGNED by

<<Name and Title of person signing for Software Owner>>
for and on behalf of <<Software Owner Name>>

In the presence of <<Name & Address of Witness>>

SIGNED by

<<Name and Title of person signing for Developer>>
for and on behalf of <<Developer Name>>

In the presence of <<Name & Address of Witness>>
Outline Specification of Development of the Software

<<Insert Details>>
<<Insert Details>>