Datalinx Computer Systems Ltd

End User Licence Agreement

For the Supply of

Datalinx WHM X3

Section 5 of Datalinx Standard T&C's

Contents

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 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 the Software is installed. 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 licence of the Software pursuant to condition 4 below, the Datalinx Business Partner or Reseller or/Distributer 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 licencee, may have regarding the use or application of the Software during the Warranty Period. For support please email   support@datalinx.co.uk

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 percent of the Initial 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.