



## Business Partner Terms and Conditions

### RECITALS:

Zynk Software Limited (“The Supplier”) provides a range of business automation, data integration and reporting software and services which are available for purchase on a subscription based license by customers.

(“The Reseller”) is a business entity that wishes to recommend or resell the Supplier's products and services to known contacts in return for a one-off or a recurring commission depending on the level of sales achieved.

The Supplier is the creator and owner of the products outlined in Schedule 1.

The Supplier wishes to appoint the Reseller as reseller of the Products in the Territory and the Reseller wishes to provide re-marketing, installation and other services for the Products in accordance with this Agreement.

### The Company and The Partner agree as follows:

#### 1. Definitions

In this Agreement, unless the context otherwise requires, the following terms shall have the following meanings:

<b>“Claim”</b>	the meaning given to it in clause 4.1;
<b>“Commencement Date”</b>	the date set out at the head of this Agreement;
<b>“Documentation”</b>	the then current user guides, if any, that are provided by the Supplier for use with the Products;
<b>“Expiry Date”</b>	1 year from the Commencement Date;
<b>“First Level”</b>	when applied to Support and Maintenance means initial support and maintenance services supplied to a Reseller's Client including the receipt of incoming calls, collection of basic information (e.g. problem details, error codes, impact, actions taken by the Reseller's Client), simple diagnostics and application of non-complex published remedial action
<b>“Intellectual Property Rights”</b>	all vested contingent and future intellectual property rights including but not limited to goodwill, reputation, rights in confidential information, copyright, trade marks, logos, service marks, devices, plans, models, diagrams, specifications, source and object code materials, data and processes, design rights, patents, know-how, trade secrets, inventions, get-up, database rights (whether



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registered or unregistered) and any applications or registrations for the protection of these rights and all renewals and extensions thereof existing in any part of the world whether now known or in the future created;

<b>“Licence Fee”</b>	the fee payable for the licence of the Products pursuant to clause 14.1;
<b>“Licensed User Agreement”</b>	the Supplier's standard terms and conditions to be agreed by each Reseller Client, as varied from time to time and provided to the Reseller;
<b>“Maintenance”</b>	the analysis, coding, testing and release of corrections to the Products;
<b>“Marks”</b>	the trade marks, trade names or service marks set out in Schedule 3;
<b>“Minimum Targets”</b>	the targets set out in Schedule 4 as amended by the Supplier from time to time;
<b>“Normal Support Hours”</b>	the times set out in the SLA;
<b>“Permitted Purpose”</b>	the meaning given to it in clause 3.5;
<b>“Price List”</b>	the prices as notified by the Supplier to the Reseller from time to time as listed in Schedule 2;
<b>“Problem”</b>	the Reseller's problems/queries that are notified to the Supplier's Technical Support Contacts by the Reseller's Technical Support Contacts in accordance with the provisions of the SLA;
<b>“Products”</b>	the Products set out in Schedule 1 (including any Releases) as the same may from time to time be amended by agreement between the parties;
<b>“Release”</b>	a version of the Product made available by the Supplier to the Reseller;
<b>“Reseller's Client”</b>	a person or entity in the Territory who places an order for the Product with the Reseller, which order is sub-contracted by the Reseller to the Supplier;
<b>“Restricted Information”</b>	the meaning given to it in clause 15.1;
<b>“Second Level”</b>	when applied to Support & Maintenance means support & maintenance services other than First Level such as



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advanced diagnostics and problem solving, problem management, software workaround and software solution provision

<b>“Software Fault”</b>	behaviour of the Product which does not meet any reasonable interpretation of the behaviour described within the Documentation. For the avoidance of doubt, a Software Fault does not occur when the Product does not meet a particular need but does meet a reasonable interpretation of the behaviour defined in the Documentation;
<b>“SLA”</b>	the Service Level Agreement as outlined at <a href="http://www.zynk.com">www.zynk.com</a> ;
<b>“Support”</b>	the provision of a response to problems by telephone, electronic mail, letter or fax in accordance with the provisions of the SLA;
<b>“Support Fee”</b>	the fee payable for Support and Maintenance pursuant to clause 14.2;
<b>“Technical Support Contacts”</b>	people who (a) are trained and competent in all aspects of using and administering the Products and (b) are named in the SLA;
<b>“Term”</b>	the period starting on the Commencement Date and expiring 1 years thereafter unless either extended or earlier determined as provided in this Agreement;
<b>“Territory”</b>	United Kingdom

## 2. Appointment and Licence

- 2.1 The Supplier appoints the Reseller as a non-exclusive reseller of the Products to the Reseller's Clients for the Term in the Territory and the Reseller agrees to act in that capacity subject to the terms and conditions of this Agreement.
- 2.2 Nothing in this Agreement shall prevent the Supplier from supplying the Products to other clients in the Territory either directly or via other resellers or agents. All rights not specifically and expressly granted to the Reseller under this Agreement are reserved to the Supplier.
- 2.3 The Supplier, in consideration of the Reseller's obligations under this Agreement, grants to the Reseller a personal, non-transferable, non-exclusive right to use, sub-license, market and support the Products and Documentation (including the Intellectual Property Rights therein) only to the extent strictly necessary for the Reseller to perform its obligations under this Agreement and for no other purpose whatsoever.



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- 2.4 The Reseller grants to the Supplier a personal, non-exclusive licence to use the Reseller's Intellectual Property Rights provided by the Reseller solely in the Supplier's own sales and promotional material and to the extent strictly necessary for the Supplier to perform its obligations under this Agreement.

### 3. Intellectual Property Rights

- 3.1 The Supplier or its licensor is the owner or licensee of all Intellectual Property Rights forming part of the Products and Documentation (including the Marks).
- 3.2 Neither this Agreement nor any licence or sub-licence granted under this Agreement shall be construed to convey or transfer any ownership or proprietary interest in any Intellectual Property Rights in the Products, Documentation or the Marks to the Reseller or any third party.
- 3.3 The Reseller agrees that it will make no other copies of the Products nor any print outs of the Documentation save that it may make a reasonable number of copies of such but only to the extent and for the duration that is reasonable for First Level Support and Maintenance, back-up, archival, and training purposes.
- 3.4 Subject to clause 3.5 and except to the extent that the Supplier cannot prohibit such acts by law, the Reseller agrees not to translate, adapt, vary, modify, disassemble, decompile or reverse engineer the Products and/or Documentation or create derivative works of the same for any purpose (including error correction or any other type of maintenance) without the Supplier's prior written consent.
- 3.5 Notwithstanding clause 3.4, in the case of reverse analysis where permitted by applicable law, the Reseller may incidentally decompile the Products only if it is essential to do so in order to achieve interoperability of the Products with another software program or hardware ('Permitted Purpose') and provided the information obtained by the Reseller during such decompilation is only used for the Permitted Purpose and is not disclosed or communicated to any third party without the Supplier's prior written consent and is not used to create any software which is substantially similar to the expression of the Products nor used in any manner which would be restricted by copyright.
- 3.6 Notwithstanding clause 3.5, the Reseller undertakes to first consult the Supplier regarding any data the Reseller requires in order to achieve interoperability or to deduce underlying ideas and principles so that the Supplier may consider making the same available to the Reseller (without the Reseller having to rely on clause 3.5) subject to the restrictions on disclosure set out in clause 3.5.
- 3.7 The Reseller agrees that:
- 3.7.1 the Products and Documentation are the valuable property of the Supplier and shall be treated as confidential as described under clause 15;
- 3.7.2 it will not sell, license, lease, rent, loan, lend, transmit, network, or otherwise distribute or transfer the Products and/or Documentation in



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any manner to third parties save as is expressly permitted otherwise in this Agreement; and

3.7.3 it will maintain true and accurate records to enable the Supplier to ensure the Reseller's compliance with the terms of this Agreement. The Reseller will permit the Supplier to have access to all of the Reseller's records and computer systems and to use software audit tools on the Reseller's systems that may reasonably be required in relation thereto.

3.8 The Reseller undertakes throughout the Term:

3.8.1 not to cause or permit anything which may damage or endanger the Supplier's Intellectual Property Rights or the Supplier's title to them or assist or allow others to do so;

3.8.2 to notify the Supplier of any actual, threatened or suspected infringement of the Supplier's Intellectual Property Rights;

3.8.3 to notify the Supplier of any claim by any third party that the Products infringe any Intellectual Property Rights of any third party;

3.8.4 to take such reasonable action as the Supplier may direct at the expense of the Supplier in relation to such infringement;

3.8.5 to affix such notices to the Products or their packaging or advertising as the Supplier may be legally or statutorily required to do;

3.8.6 to compensate the Supplier for any use by the Reseller of the Supplier's Intellectual Property Rights otherwise than in accordance with this Agreement;

3.8.7 to indemnify the Supplier for any liability incurred to third parties for any use of the Supplier's Intellectual Property Rights otherwise than in accordance with this Agreement;

3.8.8 on the expiry or termination of this Agreement forthwith not to use the Intellectual Property Rights save for any Products already purchased under the terms of this Agreement;

3.8.9 not to tamper with any markings or name plates or other indication of the source of origin of the Products which may be placed by the Supplier on the Products;

3.8.10 to use the Marks (in compliance with all relevant laws and regulations) whenever any Product is referred to by the Reseller;

3.8.11 not to use any name or mark similar to or capable of being confused with the Marks nor modify any of the Marks in any way nor use the Marks or any derivation of them otherwise than is permitted by this Agreement;

3.8.12 to permit the Supplier to review without notice marketing materials containing the Marks;

3.8.13 to acknowledge that any goodwill or reputation for the Products or Documentation generated by the Reseller's obligations under this



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Agreement will belong to the Supplier and upon termination of this Agreement for whatever reason the Reseller shall not be entitled to claim recompense or compensation for such enhanced goodwill or reputation.

### 4. Third Party Claims

- 4.1 The Supplier shall defend, at the Supplier's expense, any claim (the 'Claim'), brought against the Reseller alleging that any Product and/or Documentation as acquired under this Agreement infringes an Intellectual Property Right of a third party. The Supplier shall pay all costs and damages awarded or agreed to in settlement of a Claim PROVIDED THAT the Reseller furnishes the Supplier with prompt written notice of the Claim and provides the Supplier with reasonable assistance and sole authority to defend or settle the Claim.
- 4.2 If in the Supplier's reasonable opinion the Products become the subject of a Claim, then the Supplier shall either obtain for the Reseller the right to continue using the Product and/or Documentation, replace it, or, with the prior written consent of the Reseller, modify it so it becomes non-infringing. If such remedies are not reasonably available (in the Supplier's sole opinion), then the Supplier shall grant the Reseller a credit for any Product and/or Documentation supplied, as normally depreciated, and accept its return.
- 4.3 The Supplier shall have no liability for any Claim resulting from the combination of the Product with other products which were neither supplied nor combined with the Product by the Supplier.

### 5. Supplier's Obligations and Rights

- 5.1 The Supplier agrees with the Reseller through the Term:
  - 5.1.1 to provide and promptly update information about the Products;
  - 5.1.2 to provide the Reseller with sales and marketing materials relating to the Products for the Reseller to use, reproduce and distribute solely for the purpose of the Reseller fulfilling its obligations under this Agreement;
  - 5.1.3 to provide the Reseller with copies of the Licensed User Agreement in a form suitable for use by the Reseller, along with all necessary supporting licences or documentation as varied from time to time;
  - 5.1.4 to provide training to the Reseller on the use of the Products in accordance with the Supplier's recommended training procedures subject to payment of the fees set out in Schedule 2;
  - 5.1.5 to provide Second Level Support and Maintenance services to the Reseller's Technical Support Contacts in accordance with clause 8 below subject to payment of the fees set out in Schedule 2;
- 5.2 On the Expiry Date, the Supplier agrees to extend the Term for a further period of 12 months without breaking continuity PROVIDED THAT the Reseller:
  - 5.2.1 has properly observed and performed its obligations under this Agreement throughout the Term; and



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- 5.2.2 serves a notice on the Supplier requiring such extension not later than 30 days before the Expiry Date; and
- 5.2.3 accepts that the terms of this Agreement shall apply to any extension of the Term (whether express or implied); and
- 5.2.4 has met the Minimum Targets.
- 5.3 The Supplier may add to the Products such other products as the Supplier may in its sole discretion deem appropriate PROVIDED THAT the Reseller at the Supplier's request executes a new agreement in respect of the addition on the Supplier's standard terms current at the date of such agreement.
- 5.4 The Supplier shall be entitled for any reason to reject any order, tender or request for the Products submitted by the Reseller.
- 5.5 The Supplier may, in its sole discretion, but after consultation with the Reseller, amend the Minimum Targets from time to time during the Term.

### 6. Reseller's Obligations

- 6.1 The Reseller shall use best endeavours to promote and market the Products in the Territory (at its own cost), seek orders for the Products in the Territory, and carry out the other duties specified in this clause using all due care and diligence and shall cultivate and maintain good relations with the Reseller's Clients and potential clients in the Territory in accordance with sound commercial principles.
- 6.2 The Reseller shall conduct (at its own cost) the promotion and marketing of the Products in the Territory along with the provision of Support services with all due care and diligence.
- 6.3 The Reseller shall provide First Level Support and Maintenance services to the Reseller's Clients in accordance with clause 7 below, and shall provide co-operation and assistance to the Supplier in the Supplier's efforts to provide Second Level Support and Maintenance.
- 6.4 The Reseller shall keep the Supplier informed of all its sales and promotion activities by means of monthly marketing and sales reports, which reports shall include details of all revenues associated with sale of the Products. The Supplier may at its own expense upon reasonable notice inspect and/or audit such reports in order to verify sales and orders and such audits and inspections shall take place during reasonable business hours and in such manner so as not to interfere with the Reseller's normal business activities and on the understanding that the Supplier shall not be entitled to more than two audits in each calendar year during the Term.
- 6.5 The Reseller shall throughout the Term:
  - 6.5.1 obey the Supplier's reasonable instructions in relation to the intended use of the Products;
  - 6.5.2 advertise regularly the Products by advertising in print or in digital media copies of which should be supplied to the Supplier at the Reseller's expense upon the Supplier's request;



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- 6.5.3 supply to the Supplier such information and support as may enable the Supplier to carry out its obligations under this Agreement;
  - 6.5.4 provide training to members of its own organisation and to the Reseller's Clients wishing to use the Products; and
  - 6.5.5 use its best endeavours to meet the Minimum Targets specified in Schedule 4 or as subsequently amended by the Supplier. Failure to meet the Minimum Targets shall entitle the Supplier, at its discretion, to terminate this Agreement on the Expiry Date.
- 6.6 The Reseller shall not:
- 6.6.1 describe itself as agent or representative of the Supplier except as expressly authorised by this Agreement;
  - 6.6.2 hold itself out, or permit any person to hold it out, as being authorised to bind the Supplier in any way nor do any act which might reasonably create the impression that it is so authorised;
  - 6.6.3 pledge the credit of the Supplier in any way;
  - 6.6.4 use any advertising, promotional or selling materials in relation to the Marks, except those supplied or approved by the Supplier;
  - 6.6.5 engage in any conduct which in the opinion of the Supplier is prejudicial to business or the marketing of the Products generally;
  - 6.6.6 be concerned or interested either directly or indirectly in the manufacture, sale, promotion, marketing or importation into the Territory of any goods which compete with the Products, or have substantially similar functionality. Provided always this clause 6.6.6 shall not apply where the Reseller's Clients cannot use any of the Products or request an alternative product to the Product whereupon the Reseller may sell, promote or market such products as it sees fit;
  - 6.6.7 make or give any promises, warranties, guarantees or representations concerning the Products other than those contained in the Licensed User Agreement; or
  - 6.6.8 supply any Products to any third party until such third party has signed the Licensed User Agreement or any related software licences substantially in the form of the Licensed User Agreement unless the Supplier has given its prior written consent otherwise. The Reseller shall only make material changes to the Licensed User Agreement that it agrees with the Reseller Client if the Supplier has given its prior written consent to such changes.
- 6.7 The Reseller shall indemnify and keep indemnified the Supplier from and against any and all loss fees and costs incurred by the Supplier resulting from breach of this Agreement by the Reseller including:
- 6.7.1 any act or neglect or default of the Reseller's agents employees licensees or Clients;
  - 6.7.2 breaches resulting in any successful claim by any third party alleging libel or slander in respect of any claim in any Documentation or any





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other matters arising from the resale of the Products PROVIDED THAT such liability has not been incurred by the Supplier through any default on its part in carrying out the terms of this Agreement.

- 6.8 The Reseller shall pay all expenses of and incidental to performing its obligations under this Agreement.

### 7. Reseller's Support and Maintenance Obligations

- 7.1 The Reseller shall provide First Level Support and Maintenance services for the Product to each Reseller Client.

- 7.2 The Reseller shall ensure that the Product and the Reseller's Client's computer hardware are managed in a proper manner and that all persons with administrative authority over the Product shall be competent trained employees only or shall be persons under their supervision.

- 7.3 The Reseller shall notify the Supplier if any Problem or Software Fault is not covered by this Clause 7 and any time spent thereafter by the Supplier investigating such Problems under the terms of Clause 8 will be chargeable at the Supplier's then current rate unless the Reseller gives notice to the Supplier not to pursue such investigations. The Supplier shall invoice such charges at its discretion and such charges shall be paid within 30 days from the date of said invoice.

- 7.4 The Reseller shall provide co-operation and assistance to the Supplier in the Supplier's efforts to provide Second Level Support and Maintenance. Such co-operation and assistance shall include but not be limited to:

7.4.1 a reasonable level of responsiveness to the Supplier's requirements and communications;

7.4.2 the timely transmittal and release to the Supplier of appropriate and accurate documentation and information;

7.4.3 the prompt review and analysis of the work performed by the Supplier; and

- 7.5 the making of facilities and personnel available to assist the Supplier when and to the extent as is reasonably requested.

### 8. Supplier's Support and Maintenance Obligations

- 8.1 Subject to the terms of this Agreement and unless otherwise agreed in writing between the parties the Supplier shall provide Second Level Support and Maintenance to the Reseller during the Normal Support Hours in respect of the Products and Documentation.

- 8.2 The Supplier shall not be obliged to provide Second Level Support and Maintenance if payment of the Support Fee by the Reseller is overdue.

- 8.3 Pursuant to clause 8.1 above, the Supplier is obliged to:

8.3.1 respond only to Problems;

8.3.2 supply Second Level Support and Maintenance only to the Reseller's Technical Support Contacts; and



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8.3.3 promptly notify and make available to the Reseller all new Releases of the Product.

All other services shall be charged at the Supplier's standard rates.

- 8.4 The Reseller shall nominate two Technical Support Contacts whose names are set out in the SLA. The Reseller may change the identities of Technical Support Contacts from time to time upon prior written notice to the Supplier. The Reseller accepts that it may not be possible for the Supplier to resolve a Problem in detail until it can be discussed with one of the Technical Support Contacts.
- 8.5 The Supplier shall act upon the Reseller's Problems in accordance with the provisions of the SLA. If a Problem is due to a Software Fault, the Supplier shall thereupon use its reasonable endeavours to correct the Software Fault according to the time-scales as set out in the SLA.
- 8.6 Upon request, the Reseller shall provide the Supplier with a written statement of any Problem requiring Support and/or Maintenance services.
- 8.7 Upon reasonable request, the Reseller shall ensure that the Supplier's support personnel are provided with the appropriate approvals, access information and remote electronic access, via internet link if necessary, for the purpose of investigating or rectifying reported Problems.
- 8.8 The Supplier shall not be obliged to continue to provide Second Level Support and Maintenance services in respect of the relevant Problem if the Reseller cannot provide or obtain such approvals, information and access set out in clause 8.7 above.
- 8.9 During this Agreement additional functionality may also be released by the Supplier as separate modules and the Supplier may make such available to the Reseller at an additional charge to be mutually agreed by the parties. The Supplier shall at its sole discretion decide what constitutes a separate module and whether to make such available to the Reseller.
- 8.10 If the Reseller requests the Supplier to carry out a modification or enhancement to the Product or supply other consultancy services then the same shall be carried out under a separate professional services agreement to be agreed by the parties at the relevant time. The Supplier shall be under no obligation to agree to perform such work however.
- 8.11 The Supplier shall keep the Reseller informed in advance of any new modifications, intended or planned products which it has in development or products which it intends to replace or discontinue and the likely time-scale for introduction, replacement or discontinuation of the same.

### 9. Exclusions from Support and Maintenance

- 9.1 The Supplier shall be under no obligation to provide Support and Maintenance in respect of:
- 9.1.1 problems resulting from any modifications or customisation of the Product not made by or authorised in writing by the Supplier;
  - 9.1.2 any software other than the Product;



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- 9.1.3 incorrect or unauthorised use of Products or operator error where these are defined as use or operation not in accordance with the Documentation;
- 9.1.4 any fault in any computer hardware;
- 9.1.5 any programs used in conjunction with the Product;
- 9.1.6 use of the elements of the Product in any combination other than those specified in the Documentation;
- 9.1.7 use of the Products with any other software or products that the Supplier has not expressly authorised in writing to be used with the Products;
- 9.1.8 use of the Product with computer hardware, operating systems or other supporting software other than those specified in the Documentation.

### 10. **Warranty**

- 10.1 The Supplier warrants that for a period of 90 days from delivery the Products shall perform substantially in accordance with published specification, current at the time of delivery.
- 10.2 The Supplier does not warrant that the functions of the products will meet any particular requirements or that their operation will be entirely error-free or that all program defects are capable of correction or improvement. All other warranties including any implied warranties of merchantability, satisfactory quality or fitness for purpose or ability to achieve a particular result are hereby excluded. In the absence of fraud, no oral or written information or advice given by the Supplier or its agents or licensees shall create a warranty or give rise to any other liability other than is given in this Agreement.
- 10.3 The Supplier itself does not warrant third party products. Where the Supplier supplies third party hardware, the Supplier will pass on to the Reseller the benefit of any third party warranty which will usually be supplied by a third party manufacturer as specified in the documentation provided with the third party products.

### 11. **Warranty Remedies**

- 11.1 In respect of the Products, the Reseller agrees that its sole remedy in respect of any non-conformance with any warranty in this Agreement is that the Supplier will remedy such non-conformance and if in the Supplier's reasonable opinion, it is unable to remedy such non-conformance the Supplier will accept return of the Product and refund the Licence Fee and Support Fee, if paid and on a depreciated basis, whereupon that particular Reseller's Client's sub-licence shall immediately terminate unless otherwise agreed in writing by the Supplier and the Reseller.
- 11.2 The Reseller must promptly notify the Supplier of any non-conformance to the above warranties in order to benefit from the remedies stated above and in any event within a calendar year after delivery of any Product.



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### 12. Limitation of Liability

- 12.1 The Supplier shall indemnify the Reseller for personal injury or death caused by the negligence of its employees in connection with the performance of their duties under this Agreement, or by defects in any Products supplied pursuant to this Agreement.
- 12.2 The Supplier shall indemnify the Reseller for direct damage to tangible property caused by the negligence of its employees in connection with the performance of their duties pursuant to this Agreement. The Supplier's total liability under this clause shall be limited to £2,500 for any one event or series of connected events.
- 12.3 Save in respect of claims for death or personal injury arising from the Supplier's negligence, in no event will the Supplier be liable for any damages resulting from loss of data or use, lost profits, loss of anticipated savings, nor for any damages that are an indirect or secondary consequence of any act or omission of the Supplier whether such damages were reasonably foreseeable or actually foreseen.
- 12.4 Except as provided above in the case of personal injury, death, and damage to tangible property, the Supplier's maximum liability to the Reseller under this Agreement or otherwise for any cause whatsoever (whether in the form of a refund, the additional cost of remedial services or otherwise) will be for direct costs and damages only and will be limited to the lesser of:
- 12.4.1 the sum for which the Supplier carries comprehensive insurance cover (subject to the Supplier actually recovering such sum from the insurer);  
or
- 12.4.2 a sum equivalent to the price paid to the Supplier under this Agreement for the Products that are the subject of the Reseller's claim, plus damages limited to 25% of the same amount for any additional costs directly, reasonably and necessarily incurred by the Reseller in obtaining alternative products or services.
- 12.5 In no event shall the Supplier be liable to the Reseller for any losses whatsoever (whether lost future revenues, lost future profits, expenditure incurred to no benefit, or otherwise) suffered or incurred by the Reseller solely or substantially because this Agreement has been terminated.
- 12.6 All liability that is not expressly assumed in this Agreement is hereby excluded. These limitations will apply regardless of the form of action, whether under statute, in contract, tort, including negligence, or any other form of action. For the purposes of this clause 'the Supplier' includes its employees, sub-contractors and suppliers. The Reseller acknowledges that the Supplier's employees, sub-contractors and suppliers shall have the benefit of the limits and exclusions of liability set out in this clause in terms of the Contracts (Rights of Third Parties) Act 1999. Nothing in this Agreement shall exclude or limit liability for fraudulent misrepresentation.
- 12.7 Both parties acknowledge and agree that the limitations and exclusions of liability set out in this clause are reasonable and have been agreed taking into account the commercial value of this Agreement to each party and the



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commercial standing of each party.

### 13. Orders and Deliveries

- 13.1 Prior to entering into a sub-licence with a Reseller Client, the Reseller will deliver to the Supplier a purchase order for the Product being sub-licensed to the specific Reseller Client detailing:
- 13.1.1 the name, company number and address of the Reseller Client;
  - 13.1.2 the specific Product and number of items being ordered;
  - 13.1.3 the general hardware configuration on which the Reseller Client is licensed to use the Product;
  - 13.1.4 the delivery address;
  - 13.1.5 the Licence Fee;
  - 13.1.6 the Support Fee;
  - 13.1.7 the payment terms for the Licence Fee and the Support Fee; and
  - 13.1.8 any other material commercial provision in relation to said sub-licence.
- 13.2 The Supplier will consider such purchase order and if it approves the same it will notify the Reseller of the delivery date and shall use reasonable endeavours to deliver the Product to the Reseller at the delivery address by such date.
- 13.3 While the Supplier shall use reasonable commercial efforts to meet delivery and supply times, the Reseller's only remedy for unreasonable delay in supplying products or services will be the right to terminate this Agreement after service of notice of breach as provided for elsewhere in this Agreement.

### 14. Price

- 14.1 Prior to making any Product available to a Reseller Client, the Reseller shall purchase from the Supplier a software licence (in accordance with clause 13 above) corresponding to each sub-licence to be granted to each Reseller Client by the Reseller, such licences to be at the price set out in the Price List (plus VAT) (the 'Licence Fee').
- 14.2 The Supplier shall charge the Reseller for Second Level Support and Maintenance in respect of each sub-licence granted to each Reseller Client at the rates set out in the Price List (the 'Support Fee') or as otherwise agreed in writing between the Supplier and the Reseller.
- 14.3 The Reseller shall pay the Supplier the Licence Fee as follows:
- 14.3.1 50% upon placing the purchase order with the Supplier in accordance with clause 13.1 above; and
  - 14.3.2 50% within 30 days of an invoice being raised by the Supplier.
- 14.4 The Reseller may at its sole discretion determine the price for the Products and for the First Level Support it supplies to the Reseller Clients.
- 14.5 The Price List is subject to change by the Supplier on 30 days' prior written notice to the Reseller except where:



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- 14.5.1 the Supplier has agreed to maintain such price for the validity period of the Reseller's quote to an the Reseller's Client, provided that such validity period is no longer than 30 days; or
  - 14.5.2 the Supplier has received a purchase order from the Reseller prior to the Supplier's price increase notice becoming effective.
  - 14.6 The Reseller shall be liable for any other agreed fees, any national, European Union, value added, sales, excise, state, local or other taxes or customs duties applicable.
  - 14.7 The Reseller shall pay an interest charge on any sum outstanding to the Supplier at the rate of 5% above Barclays Bank's Sterling base rate on a monthly basis from the due date of payment until payment has actually been made. The Reseller shall notify the Supplier in writing within 10 days or receipt of an invoice that the invoice is in dispute.
  - 14.8 The Licence Fee and/or the Support Fee shall be payable to the Supplier in accordance with Schedule 2.
  - 14.9 The Reseller agrees that, except as stated specifically in this Agreement, its entire compensation for the resale of the Products to the Reseller's Clients shall be the margin on each transaction, being the difference between the wholesale and retail prices for the Products.
- 15. Confidentiality**
- 15.1 'Restricted Information' means any private, secret or confidential information which is disclosed by either party pursuant to or in connection with this Agreement (whether orally or in writing and whether or not such information is expressly stated to be confidential or marked as such).
  - 15.2 Both parties shall at all times during the continuance of this Agreement and after its termination:
    - 15.2.1 use their best endeavours to keep all Restricted Information confidential and accordingly not disclose any Restricted Information to any other person; and
    - 15.2.2 not use any Restricted Information for any purpose other than the performance of its obligations under this Agreement; and
    - 15.2.3 be responsible for the activities of any properly appointed sub-contractors or subsidiaries and undertake that they will be bound to the same extent of confidentiality as this clause.
  - 15.3 The provisions of clause 15.2 shall not apply to:
    - 15.3.1 any information in the public domain otherwise than by breach of this Agreement;
    - 15.3.2 information in the possession of the receiving party before disclosure thereof by the disclosing party;
    - 15.3.3 information obtained without restriction from a third party; and
    - 15.3.4 information required to be disclosed by a court of competent jurisdiction, governmental body or applicable regulatory authority.



## Business Partner Terms and Conditions

### 16. Duration and Termination

- 16.1 This Agreement shall become effective on the Commencement Date and shall continue in force for a term of ONE YEAR whereupon it shall renew automatically for successive annual terms unless either party gives at least 30 days' notice in writing of its decision not to renew, such notice to expire on what would otherwise be the renewal date.
- 16.2 The Supplier shall be entitled to terminate this Agreement by giving not less than 30 days' written notice to the Reseller if majority control of the Reseller is acquired by any person or group of connected persons not having control of the Reseller as at the date of this Agreement.
- 16.3 The Supplier may terminate with immediate effect upon written notice any Licensed User Agreement if any the Reseller's Client commits a breach of the Licensed User Agreement where such breach has a material adverse effect on the Supplier's Intellectual Property Rights in the Products.
- 16.4 Either party shall be entitled forthwith to terminate this Agreement by written notice to the other if:
- 16.4.1 that other party commits any material breach of any of the provisions of this Agreement and, in the case of a breach capable of remedy, fails to remedy the same within 30 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied;
  - 16.4.2 an encumbrancer takes possession or a receiver is appointed over any of the property or assets of that other party;
  - 16.4.3 that other party makes any voluntary arrangement with its creditors or becomes subject to an administration order;
  - 16.4.4 that other party goes into liquidation (except for the purposes of amalgamation or reconstruction and in such manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that other party under this Agreement);
  - 16.4.5 anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to that other party; or
  - 16.4.6 that other party ceases, or threatens to cease, to carry on business.

### 17. Termination Consequences

On the termination of this Agreement for any reason:

- 17.1 the Reseller shall within 30 days send to the Supplier or otherwise dispose of in accordance with the directions of the Supplier copies of all Products and Documentation and all advertising, promotional, sales material and Restricted Information relating to the Products then in the possession of the Reseller;
- 17.2 the Reseller shall cease to promote, market, advertise or solicit the Reseller's Clients for the Products;
- 17.3 where the Reseller has sub-licensed the Products to the Reseller's Clients, the Reseller shall use all reasonable endeavours to ensure that all the Reseller's Clients destroy/erase all Products, Documentation and all copies



## Business Partner Terms and Conditions

thereof in accordance with clause 17.1 above;

- 17.4 the Reseller shall have no claim against the Supplier for compensation for loss of reseller rights, loss of goodwill or any similar loss;
- 17.5 clauses that are necessary for the enforcement or interpretation of this Agreement shall survive, which shall include clauses relating to confidentiality and protection of Intellectual Property Rights; and
- 17.6 subject as otherwise provided in this Agreement and to any rights or obligations which have accrued prior to termination, neither party shall have any further obligation to the other under this Agreement.

### 18. **Data Protection**

The parties undertake to comply with the provisions of the Data Protection Act 1998 and any related legislation in so far as the same relates to the provisions and obligations of this Agreement.

### 19. **Interpretation**

- 19.1 In this Agreement unless the context otherwise requires:
  - 19.1.1 words importing any gender include every gender;
  - 19.1.2 words importing the singular number include the plural number and vice versa;
  - 19.1.3 words importing persons include firms, companies and corporations and vice versa;
  - 19.1.4 references to numbered clauses and schedules are references to the relevant clause in or schedule to this Agreement;
  - 19.1.5 reference in any schedule to this Agreement to numbered paragraphs relate to the numbered paragraphs of that schedule;
  - 19.1.6 the headings to the clauses, schedules and paragraphs of this Agreement will not affect the interpretation;
  - 19.1.7 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment;
  - 19.1.8 any obligation on any party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;
  - 19.1.9 any party who agrees to do something will be deemed to fulfil that obligation if that party procures that it is done.
- 19.2 In the case of conflict or ambiguity between any provision contained in the body of this Agreement and any provision contained in any Schedule, the provision in the body of this Agreement shall take precedence.

### 20. **Agency, Partnership**

This Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the parties other than the





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contractual relationship expressly provided for in this Agreement.

### 21. **Amendments**

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

### 22. **Announcements**

No party shall issue or make any public announcement or disclose any information regarding this Agreement unless prior written consent has been obtained from the other party.

### 23. **Assignment**

23.1 This Agreement is personal to the parties and, subject to clause 23.2 below, neither this Agreement nor any rights, licences or obligations under it may be assigned by either party without the prior written approval of the other party.

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

### 24. **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. However 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.

### 25. **Force Majeure**

Notwithstanding anything else contained in this Agreement, neither party shall be liable for any delay in performing its obligations under this Agreement if such delay is caused by circumstances beyond its reasonable control (including without limitation any delay caused by any act or omission of the other party) provided however that any delay by a sub-contractor or supplier of the party so delaying shall not relieve the party from liability for delay except where such delay is beyond the reasonable control of the sub-contractor or supplier concerned. Subject to the party so delaying promptly notifying the other party in writing of the reasons for the delay (and the likely duration of the delay), the performance of such party's obligations shall be suspended during the period that the said circumstances persist and such party shall be granted an extension of time for performance equal to the period of the delay. Save where such delay is caused by the act or omission of the other party (in which event the rights, remedies and liabilities of the parties shall be those conferred and imposed by the other terms of this Agreement and by law):

25.1 any costs arising from such delay shall be borne by the party incurring the



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same;

25.2 either party may, if such delay continues for more than 10 weeks, terminate this Agreement forthwith by giving notice in writing to the other.

### 26. Notices

26.1 All notices under this Agreement shall be in writing.

26.2 Notices shall be deemed to have been duly given:

26.2.1 when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or

26.2.2 when sent, if transmitted by fax or e-mail and a successful transmission report or return receipt is generated; or

26.2.3 on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or

26.2.4 on the tenth business day following mailing, if mailed by airmail, postage prepaid,

in each case addressed to the most recent address, e-mail address, or facsimile number notified to the other party.

### 27. Schedules

The provisions of all Schedules shall form part of this Agreement as if set out here.

### 28. 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 shall not in any way affect any other circumstances of or the validity or enforcement of this Agreement.

### 29. Successors and Assignees

29.1 This agreement shall be binding upon, and inure to the benefit of, the parties and their respective successors and permitted assignees, and references to a party in this Agreement shall include its successors and permitted assignees.

29.2 In this Agreement references to a party include references to a person:

29.2.1 who for the time being is entitled (by assignment, novation or otherwise) to that party's rights under this Agreement (or any interest in those rights); or

29.2.2 who, as administrator, liquidator or otherwise, is entitled to exercise those rights,

and in particular those references include a person to whom those rights (or any interest in those rights) are transferred or pass as a result of a merger, division, reconstruction or other reorganisation involving that party. For this purpose, references to a party's rights under this Agreement include any similar rights to which another person becomes entitled as a result of a novation of this Agreement.



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### 30. **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 any right of that party under this Agreement. No right, power or remedy in this Agreement conferred upon or reserved for either party is exclusive of any other right, power or remedy available to that party.

### 31. **Counterparts**

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

### 32. **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.

### 33. **Subcontracting**

With the prior written consent of the Supplier (such consent not to be unreasonably withheld or delayed) the Reseller may perform any or all of its obligations under this Agreement through agents or sub-contractors, provided that the Reseller shall remain liable for such performance and shall indemnify the Supplier against any loss or damage suffered by the Supplier arising from any act or omission of such agents or sub-contractors.

### 34. **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.

### 35. **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.

### 36. **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.

### 37. **Third Parties**

The parties confirm their intent (subject to clause 12.6) 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.

### 38. **Reservation of Rights**

All rights not specifically and expressly granted to the Reseller by this Agreement are reserved to the Supplier.



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### 39. Retention of Title

- 39.1 All goods supplied by the Supplier to the Reseller under the terms of this Agreement shall remain the sole and absolute property of the Supplier both in law and in equity until the Reseller shall have paid the Supplier the agreed price PROVIDED THAT no title shall pass in respect of software which is licensed only and any implied or actual licence under this Agreement is revoked upon non-payment.
- 39.2 The Reseller acknowledges that it is in possession of all goods supplied under the terms of this Agreement solely as bailee for the Supplier until the Reseller shall have paid the Supplier the agreed price.
- 39.3 Until such time as in accordance with the above provisions the Reseller becomes the owner of the Products the Reseller will store them in a manner which makes them readily identifiable as the products of the Supplier.
- 39.4 Notwithstanding the retention of the property in the Products by the Supplier in accordance with the above provisions all Products supplied by the Supplier to the Reseller under the terms of this Agreement shall be at the insurable risk of the Reseller as soon as they are delivered by the Supplier to the Reseller's premises or otherwise to its order.
- 39.5 Until such time as in accordance with the above provisions either the Reseller shall have ceased to have the right to retain possession of the goods or shall have acquired the property in them, the Reseller shall be entitled to resell the Products in the ordinary course of the business but shall account to the Supplier for the proceeds of sale.

### 40. Proper Law and Jurisdiction

- 40.1 This Agreement and all matters arising from it and any dispute resolutions referred to below shall be governed by and construed in accordance with English law notwithstanding the conflict of law provisions and other mandatory legal provisions save that:
  - 40.1.1 the Supplier shall have the right to sue to recover its fees in any jurisdiction in which the Reseller is operating or has assets; and
  - 40.1.2 the Supplier shall have the right to sue for breach of its Intellectual Property Rights and other 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 relating to its Intellectual Property Rights might be taking place.
- 40.2 Each party recognises that the other party's business relies upon the protection of its Intellectual Property Rights and that in the event of a breach or threatened breach of Intellectual Property Rights, the other party will be caused irreparable damage and such other party may therefore be entitled to injunctive or other equitable relief in order to prevent a breach or threatened breach of its Intellectual Property Rights.
- 40.3 With respect to all other disputes which are not Intellectual Property Rights related pursuant to clauses 40.1 and 40.2 above and its special rules the



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following procedures in clauses 40.3 to 40.5 shall apply. Where there is a dispute the aggrieved party shall notify the other party in writing of the nature of the dispute with as much detail as possible about the deficient performance of the other party. 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 deficiency and the corrective action to be taken by the respective parties. The representatives shall produce a report about the nature of the dispute in detail to their respective boards 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 of a written notice by one to the other. 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.

- 40.4 If the parties cannot resolve a dispute in accordance with the procedure in clause 40.3 above, then they shall with the assistance of the Centre for Effective Dispute Resolution ('CEDR'), 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 either party fails or refuses to agree to or participate in the ADR procedure or if in any event the dispute or difference is not resolved to the satisfaction of both parties within <<e.g. 90>> days after it has arisen, the matter shall be settled in accordance with the procedure below.
- 40.5 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 purposes of hearing and determining any dispute arising out of this Agreement. For the avoidance of doubt, the place of performance of this Agreement is agreed by the parties to be England.
- 40.6 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 between the parties.



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### **SCHEDULE 1 The Products and Services**

- Zynk “Workflow” - A business workflow automation platform
- Zynk “Insights” - A business intelligence and reporting application
- Zynk “Cloud Backup for Sage 50” - A backup tool for Sage accounting system

### **SCHEDULE 2 Price List**

#### **Payment Details**

All payments shall be made in the currency of the original transaction UK Pounds Sterling or US Dollars by bank transfer to the Supplier's bank.

#### **Product Price List**

See current price list at [www.zynk.com](http://www.zynk.com)

#### **Licence Fee**

Included in annual product license fee

#### **Support Fee**

Included in annual product license fee

#### **Training**

To enable the Reseller's personnel to supply First Level Support and Maintenance to the Reseller's Clients, the Supplier shall provide training and consultancy support.

All such training and consultancy support shall be provided on the premises of the Supplier, which is the address given in this Agreement.

#### **Training Fee**

£500+VAT per day

#### **Expenses**

In all cases of training and support provided by the Supplier, the Reseller shall be responsible to pay its personnel's travel, hotel and other similar expenses.

### **SCHEDULE 3 The Marks**

Zynk® is a registered trademark of Zynk Software Limited.



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**SCHEDULE 4**  
**Minimum Targets**

<b>Turnover</b>	<b>Payment / Discount</b>
£0 - £1,000	10%
£1,000 - £5,000	20% recurring
£5,000 - £10,000	25% recurring
£10,000+	30% recurring