

06-27-2001

T

Docket No.:

Y

23064-002



Tab settings

attached original documents or copy thereof.

To the Honorable Commissioner of Patents

101762738

1. Name of conveying party(ies):

**jBase Software, Inc.**  
205 Newbury Street, Suite 407  
Framingham, MA 01701 USA

6/18/01

- Individual(s)
- General Partnership
- Corporation-State **Delaware**
- Other

2. Name and address of receiving party(ies):

Name: **Temenos Holdings NV**

Internal Address: **World Trade Center Curacao**

Street Address: **Unit BC.II.01.04, Piscadera Bay,**

City: **Willemstad, Curacao NA** State: \_\_\_\_\_ ZIP: \_\_\_\_\_

- Individual(s) citizenship
- Association
- General Partnership
- Limited Partnership
- Corporation-State
- Other **a Netherlands Antilles company**

If assignee is not domiciled in the United States, a domestic designation is  Yes  No

(Designations must be a separate document from Additional name(s) & address(es)  Yes  No

Additional names(s) of conveying party(ies)  Yes  No

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other
- Merger
- Change of Name

Execution Date: **October 7, 1999**

4. Application number(s) or registration numbers(s):

A. Trademark Application No.(s)

76/221,063  
76/221,062

B. Trademark Registration No.(s)

Additional numbers  Yes  No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: **Christine M. Baker, Esquire**

Internal Address: **Mintz Levin Cohn Ferris**

**Glovsky and Popeo PC**

Street Address: **One Financial Center**

City: **Boston**

State: **MA** ZIP: **02111**

6. Total number of applications and registrations involved: 2

7. Total fee (37 CFR 3.41): \$ **65.00**

Enclosed

Authorized to be charged to deposit account

8. Deposit account number: **50-0311**

DO NOT USE THIS SPACE

06/26/2001 TDIAZ1 00000125 76221063

01 FC:481 40.00 OP  
02 FC:482 25.00 OP

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

**Christine M. Baker**

Name of Person Signing

*Christine M. Baker*  
Signature

6/18/01

Date

Total number of pages including cover sheet, attachments, and

22

TRADEMARK

REEL: 002319 FRAME: 0819

**DESIGNATION OF DOMESTIC REPRESENTATIVE**

Mark: JBASE

Serial No.: 76/221,063

Applicant: Temenos Holdings NV

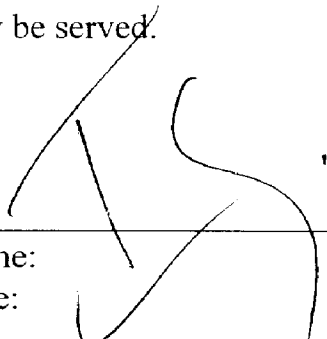
Date of Signature: 14.06.01

Domestic Representative: Christine M. Baker, Esq.

whose postal address is Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., One Financial Center, Boston, MA 02111, U.S.A., is hereby designated applicant's representative upon whom notices or process in proceedings affecting the mark may be served.

Name:

Title:

  
Isabelle H. F. Rinal  
legal counsel

TRADOCS:1395629.1(TWVH011.DOC)

TRA 1528113v1

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TEMENOS HOLDINGS N.V.

jBASE SOFTWARE LTD.

- and -

MARTIN JAMES IDLE and CLIVE ANTHONY KETTERIDGE

---

AGREEMENT RELATING TO SALE OF  
CERTAIN INTELLECTUAL PROPERTY RIGHTS

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*EH* October, 1999

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WHITE & CASE  
7-11 Moorgate  
London EC2R 6HH

TRADEMARK  
REEL: 002319 FRAME: 0821

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AGREEMENT dated 8 October, 1999 made between:

1. **jBASE SOFTWARE LTD**, whose registered office is at 599 Maxted Road, Hemel Hempstead, Herts HP2 7DX (registered in England and Wales number 2979374) (the "Seller");
2. **TEMENOS HOLDINGS N.V.** a company incorporated under the laws of the Netherlands Antilles (the "Purchaser"); and
3. the persons whose names and addresses are set out in Schedule 3 (together, the "Partners").

#### RECITAL

- A. The Partners are the owners of the whole of the issued shares in the capital of the Seller and were involved in the development of the Products (as defined below).
- B. The Seller has agreed to sell and the Purchaser, at the request of the Partners and subject to their agreeing to be parties to this Agreement for the purposes described below, has agreed to purchase the Intellectual Property Rights (as defined below) in the Products on the terms and subject to the conditions hereof.

#### NOW IT IS AGREED:

1. Definitions and Interpretation

In this Agreement:

- |                     |   |
|---------------------|---|
| "Business Day"      | means any day on which banks are open for business in England, the Netherlands and the Netherlands Antilles;  |
| "Claim"             | means a claim by the Purchaser against the Seller in respect of the breach of any of the Warranties set out in Schedule 2;  |
| "Closing"           | means the closing of the sale and purchase contemplated by this Agreement;  |
| "Copyrights"        | means all vested contingent and future rights of copyright and all rights in the nature of copyright in all languages and all accrued rights of action and all other rights of whatever nature whether now known or in the future created by virtue of or pursuant to any of the laws in force in each and every part of the world; |
| "Disclosure Letter" | means the draft disclosure letter (draft dated 8 October, 1999), in the agreed form, from the Partners to Temenos Systems (NL) BV which was prepared for the purposes of a possible sale  |

	of the whole of the Seller's issued shares constituting exceptions to the Warranties for the purposes of Clause 6.1 in so far as the matters referred to in that letter relate to the Intellectual Property Rights in the Products;
"Distribution Agreement"	means the distribution agreement between the Purchaser and the Seller in the agreed form;
"Intellectual Property Rights"	means all Patents, Copyrights, Marks, Know-How and Other IPRs;
"Know-How"	means all rights anywhere in the world in and to all industrial and commercial trade secrets and confidential and secret research, developments, design, inventions, ideas, information, data, skills, products, processes, drawing, logos and specifications;
"Licensee"	means jBASE Software, Inc., a company incorporated under the laws of Delaware, USA;
"License Agreement"	means the Agreement between the Seller and the Licensee dated October 14, 1994 granting the Licensee a license to distribute, sub-license, maintain, enhance and develop the Software;
"Marks"	means all trade marks, service marks and logos whether registered in the UK or elsewhere or unregistered (including applications for registration thereof) together with all rights of like nature arising (whether by operation of law, registration or otherwise) out of the same in any part of the world and the rights to apply for the same and the benefit of any and all licences in connection with the foregoing;
"Modification"	in relation to any computer program or documentation includes any translation (whether into another computer or national language) adaptation, enhancement, modification, variation, revision, upgrade, bug-fix and error correction, regardless if any such modification was made, who made it and on whose behalf it was made;
"Other IPRs"	means all designs (registered or unregistered), utility models, database rights and all other intellectual or industrial property rights (including without limitation as to the secrecy or

confidence) arising (whether by operation of law, registration or otherwise) under English Law or in any other part of the world to the extent that the same are not otherwise included within the definitions of Copyright, Marks, Patents and Know How and the right to apply for the same and the benefit of any and all licences in connection with the foregoing;

“Patents”

letters patent and the right to apply for letters patent in any part of the world and any similar rights situated in any country; and the benefit of any and all licences in connection with the foregoing;

“Products”

means the product titles together with all product information set out in Schedule 1 and all versions thereof and in each case including the Software comprised therein and the related packaging, the source code of which is contained in the CD-Rom which is annexed to this Agreement;

“Software”

means any and all versions of computer programs in both source and object code form, including all modules, routines and sub-routines thereof and all source and other preparatory materials relating thereto, including user requirements, functional specifications and programming specifications, ideas, principles, programming languages, algorithms, flow charts, logic, logic diagrams, orthographic representations, file structures, coding sheets, coding, and including any manuals or other documentation relating thereto, computer generated works and any modification thereof;

“Term”

the full period of copyright in the Works and the Products and all renewals, revisions and extensions of such period subsisting or arising under the laws in each and every part of the world and afterwards so far as permissible in perpetuity;

“Warranties”

means the representations and warranties set out in Schedule 2 and any other representations or warranties given by the Seller under this Agreement or which have become terms of the Agreement; and



“Works”

means the works embedded in any media or any broadcast work or shown in any performance which embody or record any part of the Know-How or which is otherwise used in or generated for the business of the Seller.

2. Interpretation

2.1 All references in this Agreement to a statutory provision shall be construed as including references to:

2.1.1 any statutory modification, consolidation or re-enactment (whether before or after the date of this Agreement) for the time being in force;

2.1.2 all statutory instruments or orders made pursuant to a statutory provision; and

2.1.3 any statutory provisions of which a statutory provision is a consolidation, re-enactment or modification.

2.2 The headings in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

2.3 The recitals and schedules to this Agreement form part of this Agreement.

2.4 Reference in this Agreement to a Clause or Schedule shall mean a reference to a clause, paragraph or Schedule to this Agreement.

2.5 Reference in this Agreement to “indemnify” and “indemnifying” any person against any circumstance include indemnifying and keeping him harmless from all actions, claims and proceedings from time to time made against him and all loss or damage and all payments, reasonable costs or expenses made or reasonably incurred by that person as a consequence of or which would not have arisen but for that circumstance.

2.6 Any document being “in the agreed form” means in a form which has been agreed by the parties on or before the date of this Agreement and for identification purposes signed by them or on their behalf by their solicitors.

2.7 The terms “subsidiary” and “holding company” shall have the meanings set out in Section 736 of the Companies Act 1985.

3. Agreement for Sale

3.1 The Seller hereby sells and assigns to the Purchaser with full title, guarantee (but as if the covenants implied in Section 6(2) of the Law of Property (Miscellaneous Provisions) Act 1994 and the words “other than any charges, encumbrances or rights which that Person does not and could not reasonably be expected to know about” in Section 3(1) of that statute were deleted from it) all Intellectual Property Rights in the Products together with all and any rights attaching thereto or accruing to them at Closing.

3.2 Each of the Partners hereby sells and assigns to the Purchaser with full title, guarantee (but as if the covenants implied in Section 6(2) of the Law of Property (Miscellaneous Provisions) Act 1994 and the words "other than any charges, encumbrances or rights which that Person does not and could not reasonably be expected to know about" in Section 3(1) of that statute were deleted from it) all Intellectual Property Rights (if any) held by them in the Products together with all and any rights attaching thereto or accruing to them at Closing.

4. Purchase Price

4.1 The purchase price for the Intellectual Property Rights will be US\$1,400,000 which shall be paid to the Seller in the manner set out in Section 5.4. The Partners agree that neither the Purchaser nor the Seller shall be liable to pay any amount to them in respect of the transactions contemplated by this Agreement.

4.2 The Purchaser may, if it wishes to do so, set-off against any amount payable to the Seller pursuant to this Agreement the amount of any payment due by the Seller to the Purchaser pursuant to this Agreement including, without limitation, any amount payable in respect of a breach of Warranty if and to the extent that:

4.2.1 the Seller has admitted liability for the relevant amount; or

4.2.2 the Purchaser has received written advice from counsel of no less than six years standing that it has good prospects of succeeding in an action in respect of the relevant circumstances and the Buyer has commenced such an action.

5. Closing

5.1 The closing of the sale of the Intellectual Property Rights shall take place at the offices of White & Case in Brussels immediately following the execution and exchange of this Agreement.

5.2 On Closing, the Seller shall deliver to the Purchaser:

5.2.1 such conveyances, transfers, assignments and novations in the agreed form, duly executed as a deed by the Seller and any necessary third party, together with such documents of title as the Purchaser may require or as it may direct to vest in the Purchaser the full benefit of the Intellectual Property Rights; and

5.2.2 an up to date and current version of the Products in source code; and

5.2.3 the Distribution Agreement executed by the Seller.

5.3 The Purchaser shall not be obliged to proceed to Closing unless the Seller complies with its obligations under Clause 5.2. in all material respects.

5.4 Subject to the performance by the Seller of its obligations under Clause 5.2, the Purchaser shall deliver the Distribution Agreement executed by the Purchaser to the Seller and shall pay the purchase price to the Seller as follows:

5.4.1 US\$500,000 within two Business Days of Closing;

5.4.2 US\$300,000 on 1 December, 1999;

5.4.3 US\$300,000 on 1 April, 2000; and

5.4.4 US\$300,000 on 1 July, 2000.

6. Warranties and Indemnities

6.1 The Seller hereby warrants and represents to the Purchaser in the terms set out in Schedule 2 subject only to:

6.1.1 any matter which is fairly disclosed in the Disclosure Letter and any matter expressly provided for under the terms of this Agreement; and

6.1.2 any matter or thing done or omitted to be done in the future pursuant to this Agreement or otherwise at the request in writing or with the approval in writing of the Purchaser,

Except as expressly otherwise provided, the Warranties shall be separate and independent and shall not be limited by reference to any other paragraphs of Schedule 2 or by anything in this Agreement.

6.2 The Warranties and all other provisions of this Agreement shall not be extinguished or affected by Closing or by any payment or by any other event or matter whatsoever except for a written waiver or release by the Purchaser.

6.3 Without limiting the right of the Purchaser or its ability to seek any other remedy or claim damages on any basis, in the event that any of the Warranties is breached or is untrue or misleading, the Seller covenants with the Purchaser that the Seller will pay to the Purchaser on demand:

6.3.1 the amount by which the value of any Intellectual Property Right (including one warranted to exist but not in fact existing) is or becomes less than its value would have been if the relevant Warranty had not been breached or not been untrue or misleading;

6.3.2 the amount of any liability or increase in any liability which the Purchaser would not have incurred or become subject to or which would not have increased if the relevant Warranty had not been breached or not been untrue or misleading; and

6.3.3 an amount equal to any reasonable costs and expenses incurred by the Purchaser as a consequence of the matters giving rise to the relevant breach of warranty.

6.4 Each of the Warranties is without prejudice to any other warranty or undertaking and, except where expressly stated, no Clause governs or limits the extent or application of any other Clause.

7. Use of Intellectual Property Rights

Neither the Seller nor the Partners shall, either alone or jointly with, through or as manager, adviser, consultant or agent, directly or indirectly use any of the Intellectual Property Rights or anything which is intended, or is likely to be confused with, any of the Intellectual Property Rights for the purpose of competing with the conduct of any business carried on by the Purchaser for the purpose of exploiting the Intellectual Property Rights. Nothing in this clause shall preclude the Seller from exploiting its rights under the Distribution Agreement.

8. Seller's Protection

8.1 In no circumstances shall the liability of the Seller in respect of Claims exceed the amount of consideration payable to the Seller under this Agreement. The Seller shall not be obliged to make any payment in respect of a Claim which exceeds the amount of the consideration which it has received under this Agreement provided that the Purchaser shall be entitled to set off the amount of a Claim (including the Purchaser's reasonable estimate at the cost of enforcing such Claim) if and to the extent that:

8.1.1 the Seller has admitted liability for such Claim; or

8.1.2 the Purchaser has received written advice from counsel of no less than six years standing that it has good prospects of succeeding in an action in respect of such Claim and the Purchaser has commenced such an action.

8.2 The Seller shall not be liable in respect of a Claim unless the aggregate liability of the Seller in respect of all Claims exceeds US\$150,000 in which case the Seller shall be liable for the whole amount and not merely the excess over US\$150,000.

8.3 The Purchaser shall, promptly upon becoming aware of such fact or circumstances, deliver to the Seller notice of any fact or circumstances which it considers to be reasonably likely to give rise to a Claim. The Seller shall have no liability in respect of any Claim unless the Purchaser shall have given notice in writing to the Seller of such claim specifying (in reasonable detail) the matter which gives rise to the claim, the nature of the claim and the amount claimed in respect thereof within 18 months of the date hereof.

8.4 If the Seller pays to or for the benefit of the Purchaser an amount in respect of any Claim and the Purchaser subsequently receives from any other person any payment in respect of the matter giving rise to the Claim, the Purchaser shall pay to the Seller an amount equal to the payment received after having taken into account any cost, liability (including tax liability) or expense in respect of the amount so recovered and except to any extent that the liability of the Seller in respect of the Claim was reduced to take account of such payment.

8.5 If any payment is made by the Seller to the Purchaser in respect of any Claim, the payment shall be made by way of adjustment of the Purchase Price paid by the Seller under this Agreement and the Purchase Price shall be deemed to have been reduced by the amount of such payment.

8.6 The provisions of this Clause 8 shall not apply in respect of a Claim if it is (or the delay in the discovery of which is) the consequence of fraud, wilful misconduct or wilful concealment by the Seller (or any person for whose conduct the Seller may be vicariously liable).

9. Specific Indemnities

9.1 The Seller shall indemnify the Purchaser in respect of any and all claims, damages, losses, actions, proceedings, liabilities, costs and expenses (including fines), penalties, legal and other professional fees and VAT payable suffered or incurred by the Purchaser and arising from the Seller not having full legal and beneficial ownership of all Intellectual Property Rights in the Products free from any mortgages, charges, liens or other form of security interest whatsoever and free of all rights vested in third parties, provided that the Purchaser shall take all reasonable steps to mitigate any loss suffered by it in circumstances where it is entitled to claim against the Seller under this clause.

9.2 For the avoidance of doubt no disclosed matter shall affect the indemnity contained in this Clause.

10. Non-Disclosure of Information

The Seller and the Partners covenant to keep confidential any of the Intellectual Property Rights in the Products which remains confidential as at the date hereof until such times as it enters the public domain otherwise than by the Seller's or the Partners' breach of their respective obligations under this Agreement or with the Purchaser's prior written consent.

11. Notices

Any notice or other communication required to be given or served under or in connection with this Agreement shall be in writing and shall be sufficiently given or served if delivered or sent:

In the case of the Seller or the Partners to: jBASE Software Ltd  
599 Maxted Road  
Hemel Hempstead  
Herts HP2 7DX

Fax: +44 1442 211 134

Attention: Mr Nick Smith

In the case of the Purchaser to: Temenos Holdings N.V.  
c/o Temenos Systems Headquarters  
S.A.  
18 Place des Philosophes  
1205 Geneva  
Switzerland

Fax: +41 22 708 1165

Attention:

Ms Isabelle Hering

Any such notice or other communication shall be delivered by hand or sent by courier, fax or prepaid first class post. If sent by courier or fax such notice or communication shall conclusively be deemed to have been given or served at the time of despatch, in the case of service in the United Kingdom, or on the fifth Business Day following posting, in the case of international service. If sent by post such notice or communication shall conclusively be deemed to have been received two Business Days from the time of posting, in the case of inland mail in the United Kingdom, or three Business Days from the time of posting, in the case of international mail.

12. Assignment

12.1 This Agreement shall be binding upon and inure for the benefit of the successors in title of the parties but, except as set out in Clause 12.2, shall not be assignable by any party without the prior written consent of the other.

12.2 The Purchaser may, without the consent of the Seller, assign the benefit of this Agreement (including, without limitation, the Warranties), to any holding company or subsidiary of the Purchaser to whom it may transfer the Intellectual Property Rights in the Products.

13. Variation

No purported variation of this Agreement shall be effective unless it is in writing and signed by or on behalf of each of the parties.

14. Further Assurance

After Closing, the Seller, at the Purchaser's expense, shall execute such documents and take such steps as the Purchaser may reasonably require to vest and assign the full title to the Intellectual Property Rights in the Products in the Purchaser and to give the Purchaser the full benefit of this Agreement.

15. Invalidity

If any part of this Agreement is found by any court or competent authority to be invalid, unlawful or unenforceable in any jurisdiction, then that provision shall be deemed not to be a part of this Agreement, and it shall not affect the enforceability of the remainder of this Agreement nor shall it affect the validity, lawfulness or enforceability of that provision in any other jurisdiction.

16. Releases and Waivers

16.1 Any party may, in whole or in part, release, compound, compromise, waive or postpone, in its absolute discretion, any liability owed to it or right granted to it in this Agreement by any other party or parties without in any way prejudicing or affecting its rights in respect of that or any other liability or right not so released, compounded, compromised, waived or postponed.

16.2 No single or partial exercise, or failure or delay in exercising any right, power or remedy by any party shall constitute a waiver by that party of, or impair or preclude any further exercise of, that or any right, power or remedy arising under this Agreement or otherwise.

17. Counterparts

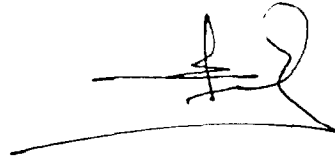
This Agreement may be executed in any number of counterparts and by the parties on separate counterparts, but shall not be effective until each party has executed at least one counterpart. Each counterpart, when executed, shall be an original of this Agreement and all counterparts shall together constitute one instrument.

18. Governing Law

This Agreement shall be governed by English law and each of the parties submits to the exclusive jurisdiction of the English courts.

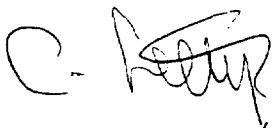

EXECUTED AND DELIVERED by the parties as a deed on the date written on the first page of this Agreement.

Signed as a deed by ~~Andreas Andreades~~ <sup>GEORGE KOUKIS</sup> )  
for and on behalf of )  
TEMENOS HOLDINGS N.V. )

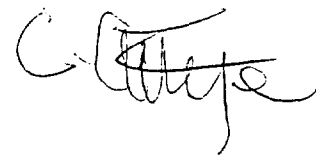


\_\_\_\_\_  
Signatory authorised to sign on behalf of  
**TEMENOS HOLDINGS N.V.**

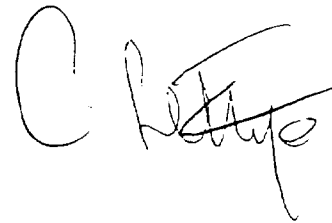
Executed as a deed )  
by **jBASE SOFTWARE LTD.** )  
acting by a director )  
and its secretary )  
or by two directors )

Director:   
Director/Company Secretary: 

Signed as a deed by Clive Anthony Ketteridge as )  
attorney for **MARTIN JAMES IDLE** under )  
a power of attorney dated 7 October, 1999 )  
in the presence of: )



Signed as a deed by **CLIVE ANTHONY KETTERIDGE** )  
in the presence of: )





## SCHEDULE 1

### (The "Software")

A database management system known as "jBASE" which supports the multivalued data model. The main components of the Software include:

jBC	-	Programming Language
jCL	-	Programming Language
jQL	-	Query Language
jEDI	-	Formal Database Interface
jTJ	-	Transaction Journalling
jFiles	-	Multivalued File Systems
jBASE OBJEX	-	Programming Interface
jDP	-	jBASE Data Provider - data Interface driver

## SCHEDULE 2

### (The "Warranties")

1. Intellectual Property
- 1.1 The Seller is the sole legal and beneficial owner of all Intellectual Property Rights in the Products and such Intellectual Property Rights are not subject to any outstanding rights of any third party nor do the Intellectual Property Rights infringe any third parties' Intellectual Property Rights.
- 1.2 The Seller has not granted any licences or rights to sub-licence or made any assignments to any third parties in respect of the Intellectual Property Rights in the Products other than pursuant to licence agreements and distribution agreements and value added reseller agreements referred to in the Disclosure Letter.
- 1.3 Nothing has been done or omitted to be done whether by the Seller or by any person which would jeopardise the validity, enforceability or subsistence of any Intellectual Property Rights in the Products.
- 1.4 So far as the Seller is aware (having made all reasonable enquiries) none of the Intellectual Property Rights are subject to any unauthorised use, claim, application or attack by any other person which could reasonably be expected to alter adversely the future commercial exploitation of the Software.
- 1.5 All Intellectual Property Rights and other material developed by the Seller including such rights in the Products are original and has not been copied from any other work or material.
- 1.6 Complete and accurate details of all Intellectual Property Rights in the Products and copies of all licences and other Agreements relating to it are contained in the Disclosure Letter.
- 1.7 Subject to the execution and exchange of the Distribution Agreement, the Seller has and continues to have all necessary rights necessary to grant and/or renew the Licence Agreements and the Distribution Agreements.
- 1.8 The Seller does not use on its letterheads, business cards, circulars, advertisements, brochures, sales literature or vehicles or otherwise carry on business under a name other than its corporate name and related trademarks.
- 1.9 The Seller has not entered into any Agreement which restricts the disclosure or use by the Seller of any technical information or any Intellectual Property Rights and there has not been any infringement by any third party of any of the rights in confidential information or Intellectual Property Rights held by the Seller.
- 1.10 The Intellectual Property Rights in the Products are free from encumbrances and any third party interests.
- 1.11 The Seller has quiet enjoyment of all Intellectual Property Rights in the Products at the date hereof.

- 1.12 In respect of any part of any Products written, developed or originated by an employee or director of the Seller:
  - 1.12.1 each such part of the Products was written, developed or originated by such employee in the course of his employment by the Seller; and
  - 1.12.2 the contract of employment between the Seller and such employee provided for the Seller to own all rights in and to such Products; and
  - 1.12.3 if sub-paragraphs 1.12.1 and 1.12.2 do not both apply, such employee has expressly assigned with full title guarantee to the Seller all Intellectual Property Rights in and to such part of the Products.
- 1.13 The Seller is in possession of all source code to the Products including without prejudice to the generality of the foregoing, source-code listings, flow-charts and all accompanying documentation.
- 1.14 So far as the Seller is aware (having made all reasonable enquiries) none of the processes employed, or products or services dealt in, by the Seller infringes any third party Intellectual Property Rights nor, except as set out in the Disclosure Letter, makes the Seller liable to pay a fee or royalty and no claims have been made, threatened or are pending, in relation to any Intellectual Property Rights against the Seller.
- 1.15 Except in the ordinary course of business, no disclosure has been made of any of the confidential information, Know How, technical processes, financial or trade secrets or customer or supplier lists of the Seller or any Intellectual Property Rights.
- 1.16 The Products function in accordance with all warranties agreed with or otherwise applicable to customers of the Seller.
- 1.17 So far as the Seller is aware (having made all reasonable enquiries) no part of the Products is or have been infected by any virus or other extraneously induced malfunction and no person has had unauthorised access to the Seller's computer systems.
- 1.18 So far as the Seller is aware (having made all reasonable enquiries) the Products are as free from defects and bugs as is acceptable to end users in commercially available high value products.
- 1.19 Except for wholly owned subsidiaries of the Seller, no other person is authorised to sub-licence, and except for wholly owned subsidiaries of the Seller, distributors authorised by the Seller and value added resellers appointed by the Seller no other person is authorised to maintain, enhance or carry out any modification on the Products.
- 1.20 The Seller has used all reasonable endeavours to procure that the Products have been produced or amended in a manner which ensures that no change of, reference to or use of any date after 31 December, 1999 will have an adverse effect on the operation of that Product.

- 1.21 The Products have been tested by both the Seller and by certain customers of the Seller in conjunction with various item of equipment and software program under the control of third parties (each a "Third Party System") with which the Products exchange date information in the course of the business of the Seller and its Subsidiaries and in such tests the Products have been found to operate in a manner which implies that no inclusion of a date or dates after 31 December 1999 in the date information exchanged with a Third Party System will have any adverse effect on such exchange of date information or the subsequent use of such date information.
- 1.22 Without limiting the generality of the warranties set out in paragraphs 1.20 and 1.21 of this schedule, the Products will so far as the Seller is aware, when responding to two-digit date input and providing date output, resolve any ambiguity as to century in a manner which is consistent, clearly defined and apparent to the user.
2. Insolvency
- 2.1 The transaction constituted by this Agreement shall not either on its own account or as part of a series of transactions be capable of being set aside or otherwise avoided by virtue of the winding-up or insolvency of the Seller or any subsidiary of the Seller or by virtue of any receiver, administrative receiver, liquidator or voluntary arrangement being appointed or put in place whether by court order or otherwise.
- 2.2 The Intellectual Property Rights being the subject of this Agreement were not acquired by the Seller in circumstances or at a price which could result in a challenge under any provision of the Insolvency Act 1986.
- 2.3 No order has been made, no resolution has been passed, no petition presented, no meeting convened for the winding up of the Seller or for a provisional liquidator to be appointed in respect of the Seller.
- 2.4 No administration order has been made and no petition for one has been presented in respect of the Seller.
- 2.5 No receiver or administrative receiver has been appointed in respect of the Seller or any of its assets.
- 2.6 No distress, execution or other process has been levied on the Seller's assets or action taken to repossess goods in the possession of the Seller.
3. Capacity and Due Authority
- 3.1 The Seller is entitled to and has full power to enter into this Agreement and perform its obligations hereunder and all corporate or other acts required to authorise execution by the Seller of this Agreement and the performance by it of its respective obligations hereunder have been duly taken.
- 3.2 No consent, authorisation or approval of any third party is required by the Seller to enable it properly to enter into and perform its obligations under this Agreement.

SCHEDULE 3

(The "Partners")

Name

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