

## **LICENCE FOR ALPHA DATA PARALLEL SYSTEMS' SDK**

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Alpha Data licences use of the SDK to you on the basis of this Licence. Alpha Data does not sell the SDK to you. Alpha Data remains the owner of the SDK (and all intellectual property rights in the SDK) at all times.

BY INSTALLING AND USING THE SDK YOU AGREE TO THE TERMS OF THIS LICENCE WHICH WILL BIND YOU AND YOUR EMPLOYEES. IF YOU DO NOT AGREE TO THE TERMS OF THIS LICENCE, ALPHA DATA WILL NOT LICENSE THE SDK TO YOU AND YOU MUST DISCONTINUE THE INSTALLATION PROCESS NOW.

### **1. LICENCE**

- 1.1. In consideration of you agreeing to abide by the terms of this Licence, Alpha Data grants you a revocable, non-transferable, non-sublicensable, non-exclusive licence to download, install and otherwise use the SDK for business purposes with Alpha Data products only.
- 1.2. You may make a reasonable number of copies of the SDK for back-up purposes only, provided that this is necessary for the activities permitted by clause 1.1. You shall use all reasonable endeavours to prevent unauthorised use of such back-up copies.
- 1.3. You are entitled to receive and use any free supplementary software code or update of the SDK incorporating "patches" and corrections of errors as may be provided by Alpha Data from time to time.
- 1.4. You may use the documentation provided as part of the SDK (**Documentation**) in support of the use permitted under clause 1.1 and make a reasonable number of copies of the Documentation, provided that this is necessary for the activities permitted by clause 1.1. You shall use all reasonable endeavours to prevent unauthorised use of the Documentation.

### **2. RESTRICTIONS ON USE**

- 2.1. You agree not to use, or sell for use, the SDK in or as part of any medical apparatus, devices, systems or equipment.
- 2.2. You may not provide, or otherwise make available, the SDK in any form, in whole or in part, to any person (other than your employees, if any) without the prior written consent of Alpha Data.
- 2.3. Except as expressly permitted by this Licence or applicable law, you undertake:
  - 2.3.1. not to copy the SDK except where such copying is incidental to normal use of the SDK or where it is necessary for the purpose of back-up or operational security;
  - 2.3.2. not to rent, lease, sub-license, loan, re-sell for profit, translate or re-distribute the SDK (or any part);
  - 2.3.3. not to disassemble, de-compile or reverse engineer the whole or any part of the SDK nor attempt to do any such things except to the extent that (by virtue of mandatory applicable law without possibility of contractual waiver) such actions cannot be prohibited because they are essential for the purpose of achieving inter-operability of the SDK with another software program, and provided that the information obtained by you during such activities:
    - 2.3.3.1. is, in respect of the software element of the SDK, used only for the purpose of achieving inter-operability of an Alpha Data product with another software program;
    - 2.3.3.2. is, in respect of the firmware element of the SDK, used only for the purpose of achieving inter-operability of an Alpha Data product with other hardware components;
    - 2.3.3.3. is not disclosed or communicated without Alpha Data's prior written consent to any third party to whom it is not necessary to disclose or communicate it; and
    - 2.3.3.4. is not used to create any intellectual property (including software and firmware) which is substantially similar to the SDK;
  - 2.3.4. to keep all copies of the SDK secure and to maintain accurate and up-to-date records of the number and locations of all copies of the SDK;
  - 2.3.5. to ensure that your employees who will use the SDK are notified of the terms of this Licence prior to the use of the SDK by such employees; and
  - 2.3.6. to supervise and control use of the SDK and ensure that the SDK is used by your employees in accordance with the terms of this Licence.
- 2.4. You must permit Alpha Data and its representatives, at all reasonable times and on reasonable advance notice, to inspect and have access to any premises, and to the computer equipment located there, at which the SDK (or any part of the SDK) is being kept or used, and any records kept pursuant to this Licence, for the purpose of ensuring that you are complying with the terms of this Licence.

### **3. SUPPORT**

- 3.1. Alpha Data shall use its reasonable endeavours to provide you with technical support during its normal business hours in relation to the use of the SDK. Please direct all technical support enquiries to [support@alpha-data.com](mailto:support@alpha-data.com).

### **4. OWNERSHIP**

- 4.1. The SDK is copyrighted by, proprietary to, and a trade secret of Alpha Data. Alpha Data retains the full right, title, interest, ownership and intellectual property rights in the SDK and all subsequent copies regardless of their form or media. The SDK is protected by the copyright laws of the United Kingdom, international copyright treaties and all other applicable copyright and intellectual property laws. This Licence is not a sale of the SDK and you have no rights in, or to, the SDK other than the right to use them in accordance with the terms of this Licence.
- 4.2. You shall not alter, change, remove or obscure or otherwise tamper with (and you shall use your best efforts to preserve) all copyright, trade marks, trade names, or other proprietary notices, legends or markings appearing on the SDK or otherwise identifying Alpha Data as the owner of the SDK. If the SDK contains any copyright or other message embedded in it, you shall not modify or remove such embedded message.

## **5. WARRANTIES**

- 5.1. You acknowledge that the SDK has not been developed to meet your individual requirements and that it is therefore your responsibility to ensure that the facilities and functions of the SDK as described in the Documentation meet your requirements.
- 5.2. This Licence sets out the full extent of Alpha Data's obligations and liabilities in respect of the supply of the SDK. The SDK is provided by Alpha Data "as is". You acknowledge that the SDK may not be free of bugs or errors and you agree that the existence of any minor errors shall not constitute a breach of this Licence.
- 5.3. ALL EXPRESS OR IMPLIED WARRANTIES IN RESPECT OF THE SDK AND THIS LICENCE, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR TERMS OF NON-INFRINGEMENT, SATISFACTORY QUALITY OR FITNESS FOR A PARTICULAR PURPOSE ARE EXCLUDED TO THE MAXIMUM EXTENT PERMITTED BY LAW.

## **6. LIABILITY**

- 6.1. Nothing in this Licence shall be deemed to limit either party's liability for:-
  - 6.1.1. death or personal injury caused by the negligence of that party, its directors, agents, officers or representatives;
  - 6.1.2. wilful default, fraud or fraudulent misrepresentation; or
  - 6.1.3. any liability which cannot by law be restricted or limited.
- 6.2. Except as provided in clause 6.1, Alpha Data will not be liable to you for the following types of loss or damage from claims arising out of or relating to this SDK and/or this Licence, howsoever caused and whether such claims are based on delict (including negligence), breach of contract, strict liability, breach of statutory duty or otherwise howsoever:
  - 6.2.1. loss of profits, business, contracts, revenue, goodwill or anticipated savings (whether such loss is direct or indirect, foreseeable or otherwise);
  - 6.2.2. indirect, special or consequential loss; or
  - 6.2.3. loss or corruption of electronic data.
- 6.3. EXCEPT FOR ANY LIABILITIES ARISING UNDER CLAUSE 6.1, THE TOTAL AGGREGATE LIABILITY OF ALPHA DATA TO YOU FOR ALL CLAIMS ARISING OUT OF OR RELATING TO THIS LICENCE, HOWSOEVER CAUSED AND WHETHER SUCH CLAIMS ARE BASED ON BREACH OF CONTRACT, DELICT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF STATUTORY DUTY OR OTHERWISE HOWSOEVER SHALL NOT IN ANY CIRCUMSTANCES, IN AGGREGATE, EXCEED THE LESSER OF (I) THE AMOUNT PAID BY YOU FOR THE FIRST ITEM OF ALPHA DATA HARDWARE WITH WHICH THE SDK IS PROVIDED OR (II) ONE THOUSAND POUNDS STERLING (£1,000). YOU ACKNOWLEDGE THAT, AS THE SDK IS PROVIDED FREE OF CHARGE WITH ALPHA DATA HARDWARE PURCHASED BY YOU, THE FOREGOING IS, IN THE CIRCUMSTANCES, A FAIR AND REASONABLE LIMIT ON ALPHA DATA'S LIABILITY.

## **7. TERMINATION AND CONSEQUENCES OF TERMINATION**

- 7.1. This Licence is effective until terminated. This Licence will terminate automatically without notice if you fail to comply with any of its provisions. Alpha Data may terminate this Licence with immediate effect if you become insolvent or a court of competent jurisdiction finds that all or any part of the SDK infringe the rights of any other party. You may terminate this Licence at any time by destroying the SDK and all copies.
- 7.2. Upon termination of this Licence for any reason, all rights granted to you under this Licence shall cease automatically and you shall forthwith cease to use the SDK. You must immediately pay to Alpha Data any sums due to Alpha Data under this Licence. You shall also immediately delete or remove the SDK from all computer equipment in your possession and immediately destroy or return to Alpha Data (at Alpha Data's option) all copies of the SDK then in your possession, custody or control and, in the case of destruction, certify to Alpha Data that you have done so.

## **8. FORCE MAJEURE**

- 8.1. Alpha Data will not be liable or responsible for any failure to perform, or delay in performance of, any of its obligations under this Licence that is caused by an event outside its reasonable control (**Force Majeure Event**).
- 8.2. Alpha Data's performance under this Licence is deemed to be suspended for the period that the Force Majeure Event continues, and Alpha Data will have an extension of time for performance for the duration of that period.

## **9. WAIVER**

- 9.1. The failure of Alpha Data to exercise or delay in exercising a right or remedy provided by this Licence or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies.
- 9.2. A waiver of a breach of any of the terms of this Licence or of a default under this Licence by Alpha Data (i) does not constitute a waiver of any other breach or default and shall not affect the other terms of this Licence and (ii) will not prevent Alpha Data from subsequently requiring compliance with the waived obligation.

9.3. The rights and remedies provided by this Licence are cumulative and (subject as otherwise provided in this Licence) are not exclusive of any rights or remedies provided by law.

#### **10. RIGHTS OF THIRD PARTIES**

10.1. No term of this Licence shall be enforceable by a third party (being any person other than the parties and their permitted successors and assignees).

#### **11. ENTIRE AGREEMENT**

11.1. This Licence constitutes the entire agreement and understanding of the parties and supersedes any previous agreement between the parties relating to the subject matter of this Licence.

11.2. Each of the parties acknowledges and agrees that in entering into this Licence, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Licence or not) other than as expressly set out in this Licence as a warranty. The only remedy available to it for breach of the warranties shall be for breach of contract under the terms of this Licence. Nothing in this sub-clause shall, however, operate to limit or exclude any liability for fraud.

#### **12. TRANSFER**

12.1. This Licence is binding on both you and Alpha Data and their respective successors and assignees. You may not transfer, assign, charge or otherwise dispose of this Licence, or any of your rights or obligations arising under it, without Alpha Data's prior written consent. Alpha Data may transfer, assign, charge, sub-contract or otherwise dispose of this Licence, or any of its rights or obligations arising under it, at any time during the term of the Licence.

#### **13. EXPORT CONTROL**

13.1. Alpha Data is subject to UK export control laws which may require Alpha Data to obtain an export licence in relation to the SDK from time to time. Alpha Data will notify you if it becomes aware that your use of the SDK is subject to control and apply for appropriate licences to deliver the SDK to you. Where applicable, you must comply with the terms of end user undertakings accepted by you in support of a licence application. This may restrict or forbid re-export to other destinations.

#### **14. SEVERABILITY**

14.1. If any term or provision or part of this Licence shall be found by any court or other competent judicial or administrative authority to be invalid or unenforceable, that term or provision or part shall, to that extent, be deemed not to form part of this Licence and the enforceability of the remainder shall not be affected.

#### **15. GOVERNING LAW AND JURISDICTION**

15.1. This Licence, its subject matter and its formation (including any non-contractual disputes or claims) shall be governed by and construed in accordance with Scots law. Each party irrevocably agrees to submit to the exclusive jurisdiction of the courts of Scotland over any claim or matter arising under or in connection with this Licence (including any non-contractual disputes or claims).