Component

Original Equipment Manufacturers (OEM)

Agreement V 3.0
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Component Original Equipment Manufacturers Agreement

This Agreement made and entered the day of the purchase of the OEM-component(s) from Dimac’s website (http://www.dimac.net), by and between Dimac Development / Duplo AB, a Swedish corporation having its office at Præstgatan 12, 252 24, Helsingborg, Sweden, (hereafter called "Dimac"), and the buyer (hereafter called "OEM/remarketer").

WITNESSETH:

WHEREAS, Dimac has developed a number of ASP-Component(s) known as “Dimac W3-Components” which operates on the Microsoft NT, Windows 2000 and Windows XP operating system (the object code form of which is hereafter called "Component"). Dimac is willing to provide it to the OEM/remarketer on the terms and conditions set forth herein; and

WHEREAS, OEM/remarketer is in the business of combining its own or third parties’ hardware and/or software so as to create certain “OEM Product(s)” and to market such OEM Product(s) on a "turnkey" basis to end-users. OEM/remarketer assures Dimac that it has the facilities, personnel, and technical expertise necessary to market the OEM Products in the Territory (as hereinafter defined); and

WHEREAS, OEM/remarketer wishes to obtain, and Dimac is willing to grant OEM/remarketer, a limited right to combine its Component with such OEM Product(s) (as hereinafter defined), solely to such End-users in the Territory.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual representations and agreements set forth herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Dimac and OEM/remarketer, intending to be legally bound, hereby agree as follows:
Section 1
DEFINITIONS

For purposes of this Agreement, the following terms shall have the respective meanings indicated below:

1.1 "Component." Dimac's Component(s) together with associated Documentation, and any fixes, updates, or upgrades which are delivered to OEM/remarketer by Dimac under this initial Agreement or under any other agreement or arrangement between the parties.

1.2 "Confidential Information." Any data or information, oral or written, treated as confidential that relates to either party's (or, if either party is bound to protect the confidentiality of any other person's information, such other person's) past, present, or future research, development or business activities, including any unannounced product(s) and service(s), and including any information relating to services, developments, inventions, processes, plans, financial information, customer and Dimac lists, forecasts, and projections.

1.3 "Documentation." Those printed instructions, manuals, and diagrams pertaining to the Component(s) to be furnished therewith.

1.4 "End-User." A prospective customer of OEM/remarketer to whom OEM/remarketer offers OEM Products for use in the regular course of such customer's business and not for resale, redistribution, remarketing, time-sharing, or service bureau use.

1.5 "Intellectual Property Rights." The intangible legal rights or interests evidenced by or embodied in (1) any idea, design, concept, technique, invention, discovery, or improvement, regardless of patentability, but including patents, patent applications, trade secrets, and know-how; (2) any work of authorship, regardless of copyrightability, but including copyrights and any moral rights recognized by law; and (3) any other similar rights, in each case on a worldwide basis.

1.6 "Object Code." The representation of the Component(s) in the binary instruction code form suitable for execution by a computer, but not generally readable by humans without reverse-assembly, reverse-compiling, or reverse-engineering.

1.7 "OEM Products." One or more combinations of Computer Equipment and Programs with other equipment and computer software independently developed or procured by OEM/remarketer, to be offered by OEM/remarketer, together with related services, to End-Users on a turnkey basis.

1.8 "Quota." Specified minimum quantities of each Product.

1.9 "Source Code." The representation of the Component(s) in a relatively high-level computer programming language.

1.10 "Sublicense." The form of agreement to be entered into between OEM/remarketer and each End-User, which grants the End-User the right and license to use the Component(s), as modified by OEM/remarketer and together with any additional programs provided by OEM/remarketer, as part of an OEM Product. Each Sublicense shall prohibit the End-User from any copying of the Component(s), from any transfer of the Component(s) to any third parties, and from any reverse-compiling, reverse-assembly, or reverse-engineering of the Component(s) from the Object Code in which they are distributed to End-Users.
Section 2
LICENSE AND RESTRICTION

2.1 Grant of License. Subject to the limitations and restrictions provided in this Section 2 and to the other terms and conditions of this Agreement, Dimac hereby grants, and OEM/remarketer hereby accepts, the limited right and license:

2.1.1 Use License - to practice, use, and operate the Component(s) and only those of Dimac’s Intellectual Property Rights embodied therein which are necessary for purposes of the reasonable exercise and enjoyment of the limited rights granted herein.

2.1.2 Derivative Works License - to create derivative works based on the Component(s) only by bundling the Component with OEM Product(s); no rights to modify the Component are granted herein.

2.1.3 Manufacturing License - to reproduce, make, and have made the OEM Product(s) into finished product units suitable for marketing and distribution in accordance with the terms and conditions hereof.

2.1.4 Distribution License - to market, distribute, and display the Component only as a component of OEM Product(s) and only in Object Code form.

2.1.5 End-User Sublicenses - to grant sublicenses for OEM Product(s) to End-Users only for use of OEM Product(s) and not for redistribution, only in conformity with the Sublicense Terms, and only in the form of OEM/remarketer’s license agreement which permits the End-User to view and indicate agreement with the license terms prior to paying for the license.

2.1.6 Reseller Sublicenses - to grant sublicenses to Resellers only for redistribution of OEM Product(s), only in conformity with the Sublicense Terms, only in written form and signed by the Reseller, and only on a standalone basis and not as bundled with third-party products.

2.2 No Media Limitation. Use and distribution of OEM Product(s) is authorized for all media now known or developed in the future, including without limitation, all electronic, magnetic, digital, laser, and optical based media.

2.3 Trademark Rights. No license is given nor intended for any tradename, trademark, or service mark proprietary to Dimac provided, however, that OEM/remarketer may reproduce the trademark(s) identified in Schedule A on OEM Product(s). OEM/remarketer shall not otherwise use such trademarks for any purpose without the prior written approval of Dimac.

2.4 Retained Rights. All rights that are not expressly granted to OEM/remarketer herein are retained by Dimac. Except as expressly provided hereunder in connection with the distribution of the Component(s), Dimac does not convey any Intellectual Property Rights to OEM/remarketer hereunder. OEM/remarketer shall have no right whatsoever to receive, review, or otherwise use or have access to the source code for the Component(s), which are permitted to be distributed by Dimac only in object code form. Dimac reserved the right to discontinue developing, producing, licensing, or distributing any of the Component(s) and to modify, replace or add to the Component(s) in its discretion at any time.

2.5 Territory. Dimac grants the OEM/remarketer the right to advertise, market, sell and support the OEM Product(s) worldwide on a nonexclusive basis.
Section 3
OBLIGATIONS OF OEM/REMARKETER

3. OEM/REMARKETER'S MARKETING AND SUPPORT RESPONSIBILITIES

3.1 Duties of OEM/remarketer. OEM/remarketer shall at its expense unless otherwise provided:

3.1.1 Manufacture finished OEM Product(s) by bundling the Component(s) provided by Dimac hereunder with OEM Product(s). Produce trade dress, End-User documentation, and packaging as required for OEM Product(s).

3.2 End-user Support. OEM/remarketer shall maintain and service End-users and shall provide all such End-users technical support, and other assistance appropriate for the Component(s).

3.3 OEM/Remarketer Personnel. OEM/remarketer shall train and maintain a sufficient number of capable technical and sales personnel, including at least one software sales representative to serve the demands of End-users for the Component(s) and one for service and support of the Component.

Section 4
ORDER PROCEDURE

4.1 Orders. OEM/remarketer shall order, pay and download the Component(s) from Dimac's website (http://www.dimac.net). No written purchase orders for Component(s) are accepted.

4.2 This Agreement Controls. Notwithstanding the content of OEM/remarketer's purchase order, this Agreement shall take precedence over such purchase order, and any conflicting, inconsistent, or additional terms of OEM/remarketer's purchase order shall be null and void.

4.3 Dimac Cancellation. Dimac reserves the right to cancel or suspend any orders placed by OEM/remarketer and accepted by Dimac, or refuse or delay shipment thereof, if OEM/remarketer fails (1) to make any payment as provided herein or in any invoice; (2) to meet credit or financial requirements established by Dimac; or (3) otherwise to comply with the terms and conditions of this Agreement.

Section 5
PRICES

5.1 Price; Resale Prices. OEM/remarketer shall pay the price per unit for the Component(s) as indicated in Described at Dimac's website. Any suggested retail prices indicated by Dimac from time-to-time are not binding on OEM/remarketer, and OEM/remarketer is free to determine its own resale prices.

5.2 Taxes and Duties. The prices stated are exclusive of income taxes, sales or use taxes, ad valorem taxes, duties, licenses, or levies imposed on the production, storage, sale, transportation or use of the Component(s). OEM/remarketer shall pay all such charges either as levied by taxing authorities or as invoiced by Dimac, or, in lieu thereof, OEM/remarketer shall provide an exemption certificate acceptable to the relevant taxing authorities.
Section 6
WARRANTY

6.1 Disclaimer of Performance Warranty. THE COMPONENT(s) AND DOCUMENTATION ARE PROVIDED "AS-IS". Dimac does not warrant, guarantee or make any representation regarding the use or the results of the use of the Component(s) or Documentation in terms of correctness, accuracy, reliability, currentness or otherwise. OEM/remarketer assumes the entire risk as to the performance and results of the Component(s) and Documentation.

6.2 OEM/Remarketer's Performance Warranty. OEM/remarketer is free to make any performance warranty regarding the Component(s) of the OEM Product(s) in OEM/remarketer's name only. OEM/remarketer shall not make any representation or warranty that binds Dimac.

6.3 Right to Contract and License. Dimac has the authority to enter into this Agreement and the right to grant the rights and licenses granted to OEM/remarketer herein without breach of obligation to any third party; and the performance of this Agreement will not breach any obligation to any third party.

6.4 Limitation of Liability. In the event that Dimac is found liable for damages based on any defect of nonconformity in the products, its total liability for each defect product shall not exceed the discounted price of such defective product.

Section 7
FREEDOM OF ACTION

7.1 OEM/remarketer Pricing. OEM/remarketer is free to determine its own resale prices for the OEM Product(s). Although Dimac may publish suggested list prices, these are suggestions only and are not binding in any way.

7.2 Dimac Determination of Component Content. Dimac reserves the right at any time without liability or prior notice to (1) determine the contents of each Component, including its specifications, features, and functions, as well as any documentation or related materials; (2) discontinue distribution of any or all Component(s) in some or all markets or through some or all channels of distribution; (3) change or terminate any of the specifications, features, or functions of the Component(s); or (4) change or terminate the level or type of support or service that Dimac makes available for each Component. Any change or discontinuance of a Component shall be indicated by an addition to or deletion from Dimac's "Suggested Price List." OEM/remarketer may cancel any orders for discontinued Components without liability.

7.3 Nonexclusivity. Dimac retains the right to market, distribute, and support the Component in the Territory directly to or through any person or entity on any terms deemed desirable by Dimac in its sole discretion.

7.4 Relationship of the parties. The relationship of Dimac and OEM/remarketer established by this Agreement is of licensor and licensee, each to constitute an independent contractor. Nothing in this Agreement shall be construed to give either party the power to direct or control the daily activities of the other party, or to constitute the parties as principal and agent, employer and employee, franchisor and franchisee, partners, joint venturers, co-owners, or otherwise as participants in a joint undertaking. Dimac and OEM/remarketer understand and agree that, except as specifically provided in this Agreement, Dimac does not grant OEM/remarketer the power or authority to make or give any agreement, statement, representation, warranty, or other commitment on behalf of Dimac, or to enter into any contract or otherwise incur any liability or obligation, express or implied, on behalf of Dimac, or to transfer, release, or waive any right, title, or interest of Dimac.
Section 8
TRADEMARKS AND INTELLECTUAL PROPERTY RIGHTS

8.1 Trademarks. Dimac shall have and retain sole ownership of the Trademarks, including the goodwill pertaining thereto. Subject to OEM/remarketer’s compliance with Dimac’s standard cooperative advertising policies, Dimac hereby grants to OEM/remarketer the right to use and display the Trademarks solely in connection with and solely to the extent reasonably necessary for the marketing, distribution, and support of the Component(s) within the Territory in accordance with the terms and conditions of this Agreement. OEM/remarketer shall market, distribute, and support the Component(s) only under the Trademarks, and not any other trademark or logo.

8.2 No Copying, etc. Without the prior written consent of Dimac, OEM/remarketer shall refrain from copying, reverse engineering, disassembling, decompiling, translating, or modifying the Component(s), or granting any other person or entity the right to do so.

8.3 Confidential Information. During the course of performance of this Agreement, Dimac may disclose certain Confidential Information to the OEM/remarketer solely to permit OEM/remarketer to perform its obligations under this Agreement. OEM/remarketer shall use its best efforts to maintain the secrecy of all such Confidential Information. OEM/remarketer shall refrain from using, disclosing, or otherwise exploiting any Confidential Information for any purpose not specifically authorized by Dimac in this Agreement. All files, lists, records, documents, drawings, specifications, equipment, and computer programs that incorporate or refer to any Confidential Information shall be returned or destroyed promptly upon termination of this Agreement.

Section 9
TERM AND TERMINATION

9.1 Term. This Agreement shall become effective on the date of the purchase of the Component(s), and shall remain in full force and effect until terminated in accordance with the provisions hereof.

9.2 Voluntary Termination at Will. OEM/remarketer or Dimac may terminate this Agreement at will, at any time, with or without cause, by written notice given to the other party at least thirty days prior to the effective date of such termination.

9.3 Termination Upon Bankruptcy. Effective immediately and without any requirement of notice, either party may, at its option, terminate this Agreement and/or suspend its performance in the event that (1) the other party files a petition in bankruptcy, files a petition seeking any reorganization, arrangement, composition, or similar relief under any law regarding insolvency or relief for debtors, or makes an assignment for the benefit of creditors; (2) a receiver, trustee, or similar officer is appointed for the business or property of such party; (3) any involuntary petition or proceeding under bankruptcy or insolvency laws is instituted against such party and not stayed, enjoined, or discharged within 60 days; or (4) the other party adopts a resolution for discontinuance of its business or for dissolution.

9.4 Consequences and Survival. Upon termination of this Agreement, OEM/remarketer may continue to dispose of its existing inventories of OEM Product(s), but OEM/remarketer shall otherwise discontinue all further promotion, marketing, and support of the Component. Without limiting the generality of the foregoing, OEM/remarketer shall cease all display, advertising, and use of all Dimac names, trademarks, logos, and designations and will not thereafter use, advertise, or display any such names, trademarks, logos, or designations. Upon termination of this Agreement, the due date of all outstanding invoices for the Component(s) shall automatically be accelerated and all such invoices shall become due and payable. All orders or portions thereof remaining unshipped as of the effective date of termination may be canceled by Dimac, at its option, to the extent they call for delivery more than 30 days after the date of termination.
Section 10
GENERAL PROVISION

10.1 Modifications, Amendments, and Waivers. This Agreement may not be modified or amended, including by custom, usage of trade, or course of dealing, except by an instrument in writing signed by duly authorized officers of both of the parties hereto. Performance of any obligation required of a party hereunder may be waived only by a written waiver signed by a duly authorized officer of the other party, which waiver shall be effective only with respect to the specific obligation described therein. The waiver by either party hereto of a breach of any obligation of the other shall not operate or be construed as a waiver of any subsequent breach of the same provision or any other provision of this Agreement.

10.2 Assignment. OEM/remarketer is granted distribution rights hereunder because of the commitments and representations OEM/remarketer is making in this Agreement, and further because of Dimac's confidence in OEM/remarketer, which confidence is personal in nature. This Agreement shall not be assignable by either party, and OEM/remarketer may not delegate its duties hereunder without the prior written consent of Dimac. Any attempt by OEM/remarketer to assign any of its rights or delegate any of its duties hereunder without the prior written consent of Dimac shall be null and void.

10.3 Governing Law. This Agreement shall be construed and enforced in accordance with the laws of Sweden as it applies to contracts negotiated, executed, delivered, and performed solely within such jurisdiction.

10.4 Force Majeure. Dimac shall not be responsible for any failure to perform due to unforeseen circumstances or to causes beyond Dimac's reasonable control, including but not limited to war, riot, embargoes, acts of civil or military authorities, fire, floods, accidents, strikes, or shortages of transportation, facilities, fuel, energy, labor, or materials. In the event of any such delay, Dimac may defer the delivery date for a period equal to the time of such delay.

10.5 Notices. Unless otherwise specifically provided, all notices required or permitted by this agreement shall be in writing and may be delivered personally, or may be sent by facsimile or certified mail, return receipt requested, to the following addresses, unless the parties are subsequently notified of any change of address in accordance with this Section 11.8:

If to Dimac: Dimac Development / Duplo AB Prästgatan 12 S-252 24 Helsingborg Sweden Facsimile: +46 42 15 80 50
If to OEM/remarketer: Address entered at purchase.

Any notice shall be deemed to have been received as follows: (1) by personal delivery, upon receipt; (2) by facsimile, 2 hours after transmission or dispatch; (3) by certified mail, 2 business day after delivery to the Swedish postal authorities by the party serving notice. If notice is sent by facsimile, a confirming copy of the same shall be sent by mail to the same address.
10.6 Entire Agreement. This Agreement constitutes the entire understanding and contract between the parties and supersedes any and all prior and contemporaneous, oral or written representations, communications, understandings, and agreements between the parties with respect to the subject matter hereof. The parties acknowledge and agree that neither of the parties is entering into this Agreement on the basis of any representations or promises not expressly contained herein.