

POWERFLEX VAR AGREEMENT

MADE AT Clayton Victoria Australia

BETWEEN Powerflex Corporation Pty Ltd ABN 26 058 475 488
of D1/758 Blackburn Rd Clayton Vic 3168
POB 624 Mount Waverley Victoria 3149 Australia
Fax: +613-9548-9003
("PFX")

AND
of
("VAR")

WHEREAS

- A. PFX is the owner of the PFXplus Software Products
- B. VAR wishes to become a Value Added Reseller of PFXplus Software Products and join the PFXplus Software Maintenance and Support Programme.

IT IS AGREED THAT

1. DEFINITIONS AND INTERPRETATION

In this Agreement unless the context indicates a contrary intention:

"**Commencement Date**" means the date set out in Schedule 1.

"**Initial Term**" means the period set out in Schedule 1.

"**PFXplus Software Products**" means any and all software, programs, associated files, related materials and activation codes owned by PFX.

"**PFXplus Development System**" means the PFXplus Development System software, programs, associated files and activations codes that allow the software to function on a Developer's computer for the purpose of writing and testing PFXplus Applications.

"**PFXplus Application**" means a program written in the PFXplus language using the PFXplus Development Kit.

"**PFXplus Runtime System**" means the PFXplus Runtime System software, programs, associated files and activation codes that enable a PFXplus application to function on an End-User's computer.

"**PFXplus Maintenance and Support Programme**" means the services described in Schedule 2, or as amended from time to time.

"**PFXplus Deployment Rules**" means the rules set out in Schedule 3, or as amended from time to time.

"**Price List**" means the PFXplus VAR Price List as published by PFX from time to time.

"**Support SERVICES**" means the services set out in Schedule 2.

"**Late Payment Interest Rate**" means 12% per annum calculated each month or part thereof, or as amended from time to time.

"**Penalty Interest Rate**" means 18% per annum calculated each month or part thereof, or as amended from time to time.

2. TERM

This Agreement shall commence on the Commencement Date and subject to clause 7 shall continue for the Initial Term. This Agreement may be renewed for subsequent Terms by agreement in writing between the parties and upon payment of any applicable fees.

3. OBLIGATION OF PFX

Upon VAR's acceptance of the terms of this Agreement and payment of any applicable fees, PFX grants to VAR a worldwide, non-exclusive right to deploy the PFXplus Software Products purchased by VAR from PFX in accordance with this Agreement and the Deployment Rules on and after the Commencement Date, during the Initial Term and any extension thereof.

PFX will provide PFXplus Software Products to VAR at prices as set out in the Price List.

PFX will provide Support Services to VAR at prices as set out in the Price List.

PFX will permit VAR to use the name, service marks, trademarks or logos of PFX in publicity releases, advertising or similar activity, provided that such use shall not be detrimental to the good name of PFX and that PFX shall be at liberty to withdraw such consent in circumstances where in the discretion of PFX such use is deemed detrimental.

4. OBLIGATION OF VAR

VAR shall purchase all PFXplus Software Products directly from PFX or from a distributor appointed by PFX regardless of deployment of such licences by VAR. Any PFXplus Software Products obtained from any other source are unlicensed and are automatically void.

VAR shall be bound by the Deployment Rules in deploying the PFXplus Software Products and its PFXplus Applications.

VAR shall maintain membership of the PFXplus Maintenance and Support Programme as specified in Schedule 1.

VAR shall comply with any Special Terms in Schedule 1.

VAR shall be bound by the Terms and Conditions of individual licences issued with PFXplus Software Products whether purchased under this Agreement or not. Those Terms and Conditions shall apply to the subject matter of the respective licence insofar as they are consistent with the terms of this Agreement including the Deployment Rules. In the event of any inconsistency the terms of this Agreement including the Deployment Rules shall prevail.

VAR shall keep complete, true and accurate books of account and records for the purpose of verifying VAR's compliance with the terms of this Agreement including the Deployment Rules and the licence issued with any individual PFXplus Software Products. Such books and records shall be kept reasonably accessible for at least 3 years following the end of the calendar year to which they pertain.

Given reasonable notice and at reasonable times VAR shall permit PFX or its agent to inspect such books and records for the sole purpose of verifying compliance but no more than once per calendar year. PFX shall bear the costs and expenses of inspections conducted under this section unless during the inspection a Significant Underpayment is established. A Significant Underpayment is a variation or error producing an underpayment to PFX that exceeds five percent (5%) of the amount actually paid to PFX for any 12 month period when compared to the amount that should have been paid.

In the event of a Significant Underpayment VAR shall immediately pay all costs related to the inspection and shall make such purchases or pay such amounts as shall bring it into full compliance with this Agreement including the Deployment Rules together with interest on all such amounts at the Penalty Interest Rate. In addition PFX will be permitted to perform additional inspections but no more than 4 times per calendar year for the next 2 years.

This section shall survive the expiry of this Agreement unless varied in writing by PFX.

5. PAYMENT

VAR shall pay the initial amount due for membership of the PFXplus Maintenance and Support Programme as specified in Schedule 1 upon execution of this Agreement.

VAR shall be responsible for and shall pay on demand all taxes including GST and charges levied against PFX in connection with this Agreement (including the purchase of any products or services under this Agreement). VAR shall be responsible for all taxes and charges including shipping charges which it incurs in connection with this Agreement.

VAR shall make all payments to PFX due under this Agreement (including for the purchase of any products or services under this Agreement) in accordance with PFX's standard terms of trade, but in any event within 30 days of invoice.

Without prejudice to the rights powers and remedies of PFX under this Agreement (including the right of PFX to withhold delivery of any order in the case of non-payment) PFX may at its discretion which shall not be unreasonably exercised charge Late Payment Interest on any amounts due but unpaid for 30 days beyond the due date.

VAR is entitled to substantial discounts from PFX product retail pricing. Quantity discounts are also available, but only apply when a single order is placed and a single payment is made for the entire quantity.

6. LIMITATION OF LIABILITY AND INDEMNITY

VAR acknowledges by acceptance of these terms that no promise representation warranty or undertaking has been made or given by PFX or any person or company on its behalf in relation to the profitability of or any other consequences of or benefits to be obtained from the delivery or use of the PFXplus Software Products and that VAR has relied on its own skill and judgement in deciding to acquire and use the PFXplus Software Products.

In the event that this Agreement or any purchase made under this Agreement constitutes a supply of goods or services to a consumer as defined in the Trade Practices Act 1974 as amended or relevant State Legislation ("The Acts") nothing contained in this Agreement excludes restricts or modifies in relation to this Agreement and the goods and services to be supplied hereunder any condition warranty right or remedy which pursuant to the Acts is applicable or is conferred on VAR or any third party where to do so is unlawful in which event PFX's liability for such breach including any consequential loss which VAR may sustain or incur shall be limited to:

- a) the replacement of the goods or the supply of equivalent goods or payment of cost of replacing the goods or acquiring equivalent goods;
- b) the repair of the goods or payment of the cost of having the goods repaired;
- c) the supplying of the services again; or
- d) the payment of the cost of having the services supplied again, as PFX may elect.

Subject to this clause all conditions and warranties that would or might otherwise be implied in this Agreement are hereby excluded to the extent permitted by law.

Other than as set out in this section PFX shall under no circumstances be liable for any loss damage or injury (including without limitation any loss or profit indirect or consequential loss damage or injury) arising from the supply of the Services or any failure by PFX to perform any obligation or observe any term of this Agreement.

VAR hereby indemnifies PFX against any loss damage or costs that may be suffered or incurred by PFX as a result of any breach of this Agreement or the supply or distribution by VAR of any PFXplus Software Products, PFXplus Runtime, PFXplus Application or any other product or service containing or using any PFXplus Software Product to any third party howsoever caused.

7. TERMINATION

PFX may terminate this Agreement if VAR

- a) commits any material breach of this Agreement which is not corrected within 30 days of being notified of the breach; or
- b) commits a material breach of the Deployment Rules; or
- c) becomes insolvent.

VAR may terminate this Agreement by giving notice in writing.

A party's right to terminate under this clause is without prejudice to any other rights or remedies that party may have at law, at equity or under statute against the defaulting party arising out of or in relation to this Agreement or the breach of or non-performance of any of the provisions of this Agreement.

Upon termination VAR may continue to use PFXplus Software Products it has paid for provided that it complies with the terms of the Deployment Rules.

8. CONFIDENTIALITY

PFX and VAR agree to maintain the confidential nature of any confidential information provided by either party to the other and only use such information solely for the purposes of the Agreement. For the avoidance of doubt confidential information means any information which

- a) is marked confidential by either party
- b) either party has indicated is confidential to the other; or
- c) by its nature is confidential (including but not limited to customer information and any other information provided under this Agreement).

This section shall survive the expiry of this Agreement.

9. MISCELLANEOUS

Entire Agreement. This Agreement embodies the entire understanding and agreement between the parties as to the subject matter of this Agreement.

Amendment. Any amendment to this Agreement must be in writing executed by the parties.

Assignment. VAR may not assign the benefit of or any of its rights or subcontract any of its obligations under this Agreement without the consent in writing of PFX.

Waiver. Any waiver of the provisions of this Agreement or of a party's rights or remedies under this Agreement must be in writing to be effective. Failure, neglect, or delay by a party to enforce the provisions of this Agreement or its rights or remedies at any time, will not be construed and will not be deemed to be a waiver of such party's rights under this Agreement and will not in any way affect the validity of the whole or any part of this Agreement or prejudice such party's right to take subsequent action.

Severability. If any term, condition, or provision in this Agreement is found to be invalid, unlawful or unenforceable to any extent, the parties shall endeavour in good faith to agree to such amendments that will preserve, as far as possible, the intentions expressed in this Agreement. If the parties fail to agree on such an amendment, such invalid term, condition or provision will be severed from the remaining terms, conditions and provisions, which will continue to be valid and enforceable to the fullest extent permitted by law.

Notices. A notice given under or for the purposes of this Agreement must be in writing and may be given to a party personally or by facsimile transmission to the facsimile number stated at the beginning of this Agreement or by delivery to the address stated at the beginning of this Agreement.

Governing Law. This Agreement is governed by and construed in accordance with the laws of Victoria Australia and the parties submit to the non-exclusive jurisdiction of the courts of that state.

SIGNED as an agreement.

SIGNED for and on behalf of
POWERFLEX CORPORATION PTY LTD by
DAVID BENNETT

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.....
(signature)
Managing Director

.....
(date)

in the presence of

.....
(name of witness in full)

.....
(signature of witness)

SIGNED for and on behalf of

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.....
(company name in full)

.....
(signature)

by

.....
(name of signatory in full)

.....
(capacity)

who hereby warrants that he/she has the authority
to execute this Agreement on behalf of VAR

.....
(date)

and in the presence of

.....
(name of witness in full)

.....
(signature of witness)