

Add-In Development Particulars

Date:	[]						
Mondago:	Mondago Limited (company number 04093676) whose registered office address is Camrascan House, Isis Way, Peterborough, PE2 6QR (email: <i>[complete email address if formal notice can be served by email]</i>)						
The Development Partner:	<i>[full corporate name]</i> of <i>[registered office]</i> (email: <i>[complete email address if formal notice can be served by email]</i>)						
Definitions: The following words shall have the following meanings: <table style="width: 100%; border: none;"><tr><td style="width: 30%;">“Commencement Date”</td><td><i>[date on which development will start to be inserted]</i></td></tr><tr><td>“Development Partner Application(s)”</td><td><i>[description of the relevant development partner Development Partner Application to be inserted]</i></td></tr><tr><td>“Mondago Software Solution(s)”</td><td><i>[description of the relevant Mondago Software Solutions]</i></td></tr></table> <p>Other words commencing with capital letters are defined in the terms and conditions attached to these Particulars.</p>		“Commencement Date”	<i>[date on which development will start to be inserted]</i>	“Development Partner Application(s)”	<i>[description of the relevant development partner Development Partner Application to be inserted]</i>	“Mondago Software Solution(s)”	<i>[description of the relevant Mondago Software Solutions]</i>
“Commencement Date”	<i>[date on which development will start to be inserted]</i>						
“Development Partner Application(s)”	<i>[description of the relevant development partner Development Partner Application to be inserted]</i>						
“Mondago Software Solution(s)”	<i>[description of the relevant Mondago Software Solutions]</i>						
Agreement: Mondago agrees to develop the Add-In(s) (as defined in the terms and conditions attached to these Particulars), and the Development Partner agrees to comply with its obligations in respect of such development, in accordance with the terms and conditions attached to these Particulars.							
Signed by Mondago 	Signed by the Development Partner 						

Add-In Development and Licensing Terms and Conditions

BACKGROUND

- (A) Mondago has developed and is the owner of various computer telephony software products which are typically licensed and distributed to various end users using OEM and distributor level distribution contracts.
- (B) The Development Partner is the developer and owner of the Development Partner Application(s).
- (C) Mondago has accepted the Development Partner onto Mondago's Development Partner Program and has agreed to develop the Add-In(s) to enable the Mondago Software Solution(s) to interoperate with the Development Partner Application(s) in accordance with, and subject to, these terms and conditions.

AGREED TERMS

1. Definitions and Interpretation

1.1. In these terms and conditions the following words shall have the following meanings:

"Add-In(s)"	means the add-in(s) required to enable the Mondago Software Solution(s) to interoperate with the Development Partner Application(s).
"API(s)"	means the application programming interface(s), where applicable, provided by the Development Partner to be used by Mondago to develop the Add-In(s).
"Commencement Date"	is as set out in the Particulars.
"Confidential Information"	means information that is proprietary or confidential and is either clearly labelled as such or otherwise identified as confidential information.
"Development Partner"	means the software developer described as the "Development Partner" in the Particulars.
"Development Partner Application(s)"	means the software application(s), as described in the Particulars, in respect of which the Add-In(s) is(are) to be developed.
"Intellectual Property Rights"	means all patents, copyrights, design rights, trade marks, service marks, trade secrets, know-how, database rights and other rights in the nature of intellectual property rights (whether registered or not) and all applications for the same which may now or in the future subsist anywhere in the world, including the right to sue for and recover damages for past infringements.
"Particulars"	means the "Add-In Development Particulars" to which these terms and conditions are attached.

“Mondago”	is as defined in the Particulars.
“Mondago Software Solution(s)”	means the Mondago computer telephony software solution(s) described in the Particulars.

1.2. The following rules of interpretation apply to these terms and conditions:

- 1.2.1. unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- 1.2.2. any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- 1.2.3. a reference to **this agreement** is a reference to the Particulars together with these terms and conditions; and
- 1.2.4. a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

2. Commencement of Add-In Development

Subject to the Development Partner complying with its obligations in clause 3, Mondago shall use reasonable endeavours to commence the development of the Add-In(s) on the Commencement Date.

3. Development Partner Obligations

- 3.1. The Development Partner shall provide Mondago with such assistance as may be required by Mondago from time to time in connection with the development, testing and operation of the Add-In(s). Such assistance shall include, but not be limited to the following:
 - 3.1.1. providing such number of copies of the Development Partner Application(s) as reasonably required by Mondago, within such timescale as is reasonably required by Mondago to develop and test the Add-In(s);
 - 3.1.2. working with Mondago and providing technical assistance regarding the development of the Add-In(s), and the testing of the Add-In(s);
 - 3.1.3. assisting Mondago with all end user and/or reseller issues in connection with the Add-In(s) both during and after installation of the relevant Mondago Software Solution(s);
 - 3.1.4. without prejudice to clause 3.2 below, providing Mondago with all assistance requested by Mondago in the event of technical issues with the Add-In(s) caused by any modification, enhancement, update or development to the Development Partner Application(s) including, but not limited to, assisting Mondago with any required modifications, enhancements, updates or developments to the Mondago Software Solutions(s) and/or the Add-In(s).
- 3.2. The Development Partner shall ensure that all modifications, updates, enhancements and developments to the Development Partner Application(s) from time to time shall, at all times,

be compatible with the Add-In(s) and the Mondago Software Solution(s) so that there is no impairment in the operation or functionality of the Add-In(s) and/or the Mondago Software Solution(s). The Development Partner shall ensure that no modifications, developments, enhancements or updates are required to be made to the Add-In(s) or the Mondago Software Solution(s) in order to maintain compatibility with the Development Partner Application(s) unless no less than 3 months' prior written notice is provided to Mondago, along with all information required by Mondago, to implement any required modifications, developments, enhancements and/or updates to the Mondago Software Solution(s) and/or the Add-In(s) or other Mondago software or systems.

- 3.3. The Development Partner shall, in all cases, provide Mondago with no less than 3 months' written notice prior to the implementation of any modifications, updates and/or developments to the Development Partner Application(s).
- 3.4. In the event that, in order for the Add-In(s) to operate, there is a requirement for a configuration change and/or the supply of additional licences of Development Partner software to end users of the Add-In(s), the Development Partner shall carry out such configuration and/or supply as appropriate.

4. Testing

Following the development of the Add-In(s) Mondago shall demonstrate the Add-In(s) to the Development Partner in an end user scenario. The development of the Add-In(s) shall be considered complete upon agreement between the parties in writing (including email) that this is the case.

5. Marketing and distribution of the Add-In(s)

- 5.1. The Parties agree that the Add-In(s) shall only be distributed as part of a Mondago Software Solution(s) through the relevant approved Mondago sales channels and the Development Partner shall not carry out any act or omission which contravenes such agreement.
- 5.2. The Development Partner hereby grants to Mondago a non-exclusive, royalty free, worldwide licence to use the Development Partner's trading name, company name, logo(s) and trade mark(s) for the purpose of demonstrating, marketing and selling the Add-In(s) and the Mondago Software Solution(s) and performing its obligations under this agreement including, but not limited to, performing the obligations set out in clause 5.3 below.
- 5.3. Mondago shall market the Add-In(s) by carrying out the following activities:
 - 5.3.1. displaying the Add-In(s) as partner Add-In(s) within the relevant Mondago Software Solution(s);
 - 5.3.2. displaying the Development Partner as an "Application Partner" on the www.mondago.com web site; and
 - 5.3.3. listing the Development Partner Application(s) as a "Partner Integration" on those Mondago Software Solution(s) web site(s) which are managed and maintained by Mondago from time to time as Mondago considers appropriate.
- 5.4. The Development Partner shall be permitted to describe itself as a "Mondago Partner".

6. Intellectual Property Rights

- 6.1. All rights, title and interest, including Intellectual Property Rights, in and to the Add-In(s) and the Mondago Software Solution(s) including any developments, adaptations, modifications and copies thereof shall belong, in law and equity, to Mondago. No licence or any other right is granted to the Development Partner, by virtue of these terms and conditions, in respect of any Intellectual Property Rights or other rights in the Add-In(s), and/or the Mondago Software Solution(s) (including any developments, adaptations, modifications and/or copies thereof) save as expressly set out in clause 6.6. No licence or any other right is granted to the Development Partner in respect of any trading name, trade mark or logo of Mondago.
- 6.2. All rights, title and interest, including Intellectual Property Rights, in and to the Development Partner Application(s) including any developments, adaptations, modifications and copies thereof shall belong, in law and equity, to the Development Partner. No licence or any other right is granted to Mondago, by virtue of these terms and conditions, in respect of any Intellectual Property Rights or other rights in the Development Partner Application(s) (including any developments, adaptations, modifications and/or copies thereof) save as expressly set out in clause 6.5.
- 6.3. The Development Partner shall do, and execute or arrange for the doing and executing of, each necessary act, document and thing that Mondago may consider necessary or desirable to perfect the right, title and interest of Mondago in and to the Intellectual Property Rights in the Add-In(s) and the Mondago Software Solution(s) (including any developments, adaptations, modifications and copies thereof).
- 6.4. Mondago shall do, and execute or arrange for the doing and executing of, each necessary act, document and thing that the Development Partner may consider necessary or desirable to perfect the right, title and interest of the Development Partner in and to the Intellectual Property Rights in the Development Partner Application(s) (including any developments, adaptations, modifications and copies thereof).
- 6.5. Without prejudice to any rights granted to Mondago in respect of the Development Partner Application pursuant to section 50B of the Copyright, Designs and Patents Act 1988, the Development Partner hereby grants to Mondago a royalty free, perpetual, non-exclusive, worldwide licence to use the Development Partner Application(s) for the purpose of:
 - 6.5.1. developing and testing the Add-In(s);
 - 6.5.2. operating the Add-In(s) and Mondago Software Solution(s) alongside the Development Partner Application(s);
 - 6.5.3. demonstrating, marketing and selling the Add-In(s); and
 - 6.5.4. providing technical support and assistance to end users of the Add-In and the Mondago Software Solution(s).
- 6.6. Mondago shall provide the Development Partner with a not for resale (NFR) license key for an applicable version of the Mondago Software Solution(s) which will include the Add-In(s) for the sole purpose of using the Add-In(s) to enable the Development Partner Application(s) to interoperate with its own internal telephone system provided that such system supports the Mondago Software Solution(s).
- 6.7. The Development Partner shall defend Mondago, its officers, directors and employees against any claims that the Development Partner Application(s) and/or the trading name, company

name, logo(s) and trade mark(s) or any other software, technology or documentation given or otherwise licensed by the Development Partner to Mondago infringes any Intellectual Property Right and shall indemnify Mondago for and against any damages, losses, costs and expenses (including legal costs and expenses) or other liabilities incurred by Mondago as a result of such claim.

- 6.8. The Development Partner shall provide all reasonable assistance to Mondago (including but not limited to the use of its name in or being joined as a party to proceedings) in connection with any action to be taken by Mondago in connection with any claim referred to in clause 6.7 above.

7. Confidentiality

- 7.1. Each party may have access to Confidential Information of the other party under this agreement. A party's Confidential Information shall not include information that:

- 7.1.1. is or becomes publicly known through no act or omission of the receiving party; or
- 7.1.2. was in the other party's lawful possession prior to the disclosure; or
- 7.1.3. is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
- 7.1.4. is independently developed by the receiving party, which independent development can be shown by written evidence; or
- 7.1.5. is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

- 7.2. Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party or use the other's Confidential Information for any purpose other than the implementation of this agreement.

- 7.3. Each party agrees to take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.

- 7.4. This clause 7 shall survive termination of this agreement, however arising.

8. Limitation of Liability

- 8.1. The Development Partner acknowledges that no payment has been made to Mondago by the Development Partner in respect of the development of the Add-In(s) Accordingly, Mondago makes no representation or warranty to the Development Partner regarding the Add-In(s) including but not limited to freedom from defects and fitness for purpose. Subject to clause 8.2 below, all warranties conditions and other terms implied by statute, common law or otherwise are, to the fullest extent permitted by law, excluded in respect of Mondago's obligations under this agreement.

- 8.2. Nothing in this agreement shall limit or exclude Mondago's liability:

- 8.2.1. for death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors;
 - 8.2.2. for fraud or fraudulent misrepresentation;
 - 8.2.3. for breach of any obligation as to title or quiet possession implied by statute; or
 - 8.2.4. for any other act, omission, or liability which may not be limited or excluded by law.
- 8.3. Subject to clause 8.2 Mondago shall not have any liability to the Development Partner, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or for any indirect or consequential loss arising under or in connection with the agreement.
- 8.4. To the extent that Mondago incurs any liability under or in connection with this agreement, Mondago's total liability to the Development Partner, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this agreement shall be limited to the amounts received by Mondago from its insurers in respect of such liability.
- 8.5. The parties expressly agree that if any limitation or provision contained or expressly referred to in this clause 8 is held to be invalid under any applicable statute or rule of law, it shall, to that extent, be deemed omitted in accordance with clause 14.

9. Termination

- 9.1. Without affecting any other right or remedy available to it, a party may terminate this agreement on giving no less than 24 months' written notice to the other party.
- 9.2. Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party:
- 9.2.1. if the other party commits a material breach of any term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 28 days after being notified in writing to do so;
 - 9.2.2. if the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
 - 9.2.3. the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986;
 - 9.2.4. if the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a

scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

- 9.2.5. if a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company, limited liability partnership or partnership) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 9.2.6. if an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
- 9.2.7. if the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- 9.2.8. if a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- 9.2.9. if a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- 9.2.10. if any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above; or
- 9.2.11. if the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

10. Effects of termination

On termination of this agreement for any reason:

10.1. Mondago shall:

- 10.1.1. cease to market, demonstrate, sell or distribute the Add-In(s);
- 10.1.2. cease the development of the Add-In(s);
- 10.1.3. cease to use the company name, trade mark(s) and logo(s) of the Development Partner including removing reference to the Development Partner being an "Application Partner" on any web site or marketing material; and
- 10.1.4. cease to include the Add-In(s) in the Mondago Software Solution(s).

10.2. The Development Partner shall cease to refer to itself as an "Application Partner" of Mondago and shall cease to refer to itself as in any way connected with Mondago;

10.3. each party shall return to the other party or, at the discretion of the other party destroy, all Confidential Information of the other party that is in the possession of that party;

- 10.4. any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination and, in respect of clauses which survive termination, obligations or liabilities which accrue after termination, shall not be affected or prejudiced;
- 10.5. any clause expressly stated to survive termination or implicitly surviving termination shall continue to survive including, but not limited to, clauses 1, 6, 7, 8, 10 and 11 to 21.

11. Force majeure

Neither party shall in any circumstances be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of delay or non-performance continues for six months, the party not affected may terminate this agreement by giving 30 days' written notice to the other party.

12. Waiver

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

13. Rights and remedies

Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

14. Severance

If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

15. Entire agreement

- 15.1. This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 15.2. Each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.

- 15.3. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.
- 15.4. Nothing in this clause shall limit or exclude any liability for fraud.

16. Variation

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

17. Assignment

Neither party shall, without the prior written consent of the other party, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

18. No partnership or agency

- 18.1. Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 18.2. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

19. Third party rights

No one other than a party to this agreement shall have any right to enforce any of its terms.

20. Notices

- 20.1. Any notice given to a party under or in connection with this agreement shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office or by email to the email address provided in the Particulars.
- 20.2. Any notice shall be deemed to have been received:
- 20.2.1. if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
 - 20.2.2. if sent by email at 9:00 am on the next Business Day after transmission; and
 - 20.2.3. if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.
- 20.3. For the purpose of this clause a "Business Day" means a day, other than a Saturday, Sunday or public holiday in England, when banks are open for business.

21. Governing law

This agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the laws of England and Wales.

22. Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been entered into on the date stated at the beginning of it.