

12-06-2001



101908682

UNITED STATES PATENT AND TRADEMARK OFFICE

RECORDATION FORM COVER SHEET

11.15.01

TRADEMARKS ONLY

To the Honorable Commissioner of Patents and Trademarks:

Please record the attached original document or copy thereof.

1. Name and address of conveying party:

DataDirect Technologies  
Ugland House, P.O. Box 309  
George Town  
Grand Cayman, Cayman Islands

A Cayman Islands corporation

REV 15

2. Name and address of receiving party:

Fleet National Bank, as Agent  
100 Federal Street  
Boston, MA 02110

A national banking association.

3. Nature of conveyance: Trademark Collateral Security and Pledge Agreement dated as of November 8, 2001

4. Execution Date: November 7, 2001

5. Registration numbers:

See Attached Schedule A

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

Sandra Vrejan, Esq.  
Bingham Dana LLP  
150 Federal Street  
Boston, MA 02110

7. Total number of applications and registrations involved: 4

12/06/2001 LMUELLER 00000037 2000319

01 FC:481  
02 FC:482

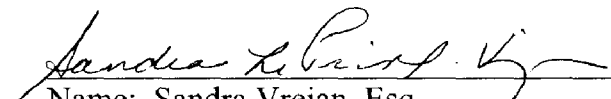
40.00 OP  
75.00 OP

BUSDOCS:1057084.1

TRADEMARK  
REEL: 002403 FRAME: 0360

8. Total fee enclosed: \$115.00
9. Deposit account number: **[Not applicable]**
10. 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.

  
Name: Sandra Vrejan, Esq.  
Date: November 15, 2001

Total number of pages submitted (including cover sheet and any attached Schedules, and conveyance document and any attached Schedules): 24

Mail documents to be recorded with required cover sheet information to:

Commissioner of Patents and Trademarks  
Box Assignment  
Washington, D.C. 20231

Sent via U.S. Post Office Express Mail on 11/15/01 Receipt No. EL199753151US

SCHEDULE A

Trademarks and Trademark Registrations

<u>Trademark</u> or <u>Service Mark</u>	<u>Registrations --</u> United States Patent and Trademark Office		
	<u>Registration No.</u>	<u>Registration Date</u>	<u>Renewal Date</u>
DATADIRECT (stylized)	2000319	September 10, 1996	September 10, 2006
SEQUELINK	1569450	December 5, 1989	December 5, 2009
DATADIRECT CONNECT	2320210	February 22, 2000	February 22, 2010
OLE DB			

<u>Trademark</u> or <u>Service Mark</u>	<u>Pending Applications --</u> United States Patent and Trademark Office	
	<u>Serial No.</u>	<u>Filing Date</u>
DATADIRECT CONNECT	75/468012	April 14, 1998

**TRADEMARK COLLATERAL**  
**SECURITY AND PLEDGE AGREEMENT**

This **TRADEMARK COLLATERAL SECURITY AND PLEDGE AGREEMENT** (as amended and in effect from time to time, this "Trademark Agreement") is made as of November 8, 2001, by and between **DATADIRECT TECHNOLOGIES**, a company incorporated in the Cayman Islands with limited liability (the "Grantor"), and **FLEET NATIONAL BANK**, a national banking association, as administrative agent (hereinafter, in such capacity, the "Administrative Agent") for itself and such other lending institutions (hereinafter, collectively, the "Lenders") which are, or may in the future become, parties to a Revolving Credit and Term Loan Agreement dated as of November 8, 2001 (as amended and in effect from time to time, the "Credit Agreement"), among DataDirect Technologies Limited (the "Foreign Borrower"), a private company limited by shares organized under the laws of Ireland, DataDirect Technologies, Inc., a Delaware corporation (the "Domestic Borrower", and collectively with the Foreign Borrower, the "Borrowers"), DataDirect Technologies Holdings, a company incorporated in the Cayman Islands with limited liability, (the "Parent"), the Lenders and the Administrative Agent.

**WHEREAS**, the Borrowers and the Grantor are members of a group of related corporations, the success of any one of which is dependent in part on the success of the other members of the group;

**WHEREAS**, the Grantor expects to receive substantial direct and indirect benefits from the extensions of credit to the Borrowers by the Lenders pursuant to the Credit Agreement (which benefits are hereby acknowledged);

**WHEREAS**, it is a condition precedent to the Lenders' making any loans or otherwise extending credit to the Borrowers under the Credit Agreement that the Grantor execute and deliver to the Administrative Agent, for the benefit of the Lenders, this Trademark Agreement;

**WHEREAS**, the Grantor has executed and delivered to the Administrative Agent, for the benefit of the Lenders, the Debenture, dated November 8, 2001, among the Grantor and the Administrative Agent (the "Security Agreement"), pursuant to which the Grantor has granted to the Administrative Agent, for the benefit of the Lenders, a charge over and security interest in certain of the Grantor's personal property and fixture assets, including without limitation the trademarks, service marks, trademark and service mark registrations, and trademark and service mark registration applications listed on Schedule A attached hereto, all to secure the payment and performance of the Obligations (as defined in the Credit Agreement); and

**WHEREAS**, this Trademark Agreement is supplemental to the provisions contained in the Security Agreement;

**NOW, THEREFORE**, in consideration of the premises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

### 1. DEFINITIONS.

Capitalized terms used herein and not otherwise defined herein shall have the respective meanings provided therefor in the Credit Agreement. In addition, the following terms shall have the meanings set forth in this §1 or elsewhere in this Trademark Agreement referred to below:

Assignment of Marks. See §2.1.

Associated Goodwill. All goodwill of the Grantor and its business, products and services appurtenant to, associated with or symbolized by the Trademarks and the use thereof.

Pledged Trademarks. All of the Grantor's right, title and interest in and to all of the Trademarks, the Trademark Registrations, the Trademark License Rights, the Trademark Rights, the Associated Goodwill, the Related Assets, and all accessions to, substitutions for, replacements of, and all products and proceeds of any and all of the foregoing.

PTO. The United States Patent and Trademark Office.

Related Assets. All assets, rights and interests of the Grantor that uniquely reflect or embody the Associated Goodwill, including the following:

(a) all patents, inventions, copyrights, trade secrets, confidential information, formulae, methods or processes, compounds, recipes, know-how, methods and operating systems, drawings, descriptions, formulations, manufacturing and production and delivery procedures, quality control procedures, product and service specifications, catalogs, price lists, and advertising materials, relating to the manufacture, production, delivery, provision and sale of goods or services under or in association with any of the Trademarks; and

(b) the following documents and things in the possession or under the control of the Grantor, or subject to its demand for possession or control, related to the production, delivery, provision and sale by the Grantor, or any affiliate, franchisee, licensee or contractor, of products or services sold by or under the authority of the Grantor in connection with the Trademarks or Trademark Rights, whether prior to, on or subsequent to the date hereof:

(i) all lists, contracts, ancillary documents and other information that identify, describe or provide information with respect to any customers, dealers or distributors of the Grantor, its affiliates or franchisees or licensees or contractors, for products or services sold under or in connection with the Trademarks or Trademark Rights, including all lists and documents containing information regarding each customer's, dealer's or distributor's name and address, credit, payment, discount, delivery and other sale terms, and history, pattern and total of purchases by brand, product, style, size and quantity;

(ii) all agreements (including franchise agreements), product and service specification documents and operating, production and quality control manuals relating to or used in the design, manufacture, production, delivery, provision and sale of products or services under or in connection with the Trademarks or Trademark Rights;

(iii) all documents and agreements relating to the identity and locations of all sources of supply, all terms of purchase and delivery, for all materials, components, raw materials and other supplies and services used in the manufacture, production, provision, delivery and sale of products or services under or in connection with the Trademarks or Trademark Rights; and

(iv) all agreements and documents constituting or concerning the present or future, current or proposed advertising and promotion by the Grantor (or any of its affiliates, franchisees, licensees or contractors) of products or services sold under or in connection with the Trademarks or Trademark Rights.

Trademark License Rights. Any and all present or future rights and interests of the Grantor pursuant to any and all past, present and future franchising or licensing agreements in favor of the Grantor, or to which the Grantor is party, pertaining to any Trademarks, Trademark Registrations, or Trademark Rights owned or used by third parties in the past, present or future, including the right (but not the obligation) in the name of the Grantor or its agents to enforce, and sue and recover for, any breach or violation of any such agreement to which the Grantor is party.

Trademark Registrations. All present or future federal, state, local and foreign registrations of the Trademarks, all present and future applications for any such registrations (and any such registrations thereof upon approval of such applications), together with the right (but not the obligation) to apply for such registrations (and prosecute such applications) in the name of the Grantor or its agents, and to take any and all actions necessary or appropriate to maintain such registrations in effect and renew and extend such registrations.

Trademark Rights. Any and all present or future rights in, to and associated with the Trademarks throughout the world, whether arising under federal law, state

law, common law, foreign law or otherwise, including the following: all such rights arising out of or associated with the Trademark Registrations; the right (but not the obligation) to register claims under any state, federal or foreign trademark law or regulation; the right (but not the obligation) to sue or bring opposition or cancellation proceedings in the name of the Grantor or its agents for any and all past, present and future infringements or dilution of or any other damages or injury to the Trademarks, the Trademark Rights, or the Associated Goodwill, and the rights to damages or profits due or accrued arising out of or in connection with any such past, present or future infringement, dilution, damage or injury; and the Trademark License Rights.

Trademarks. All of the trademarks, service marks, designs, logos, indicia, trade names, corporate names, company names, business names, fictitious business names, trade styles, elements of package or trade dress, and other source and product or service identifiers, used or associated with or appurtenant to the products, services and businesses of the Grantor, that (i) are set forth on Schedule A hereto, or (ii) have been adopted, acquired, owned, held or used by the Grantor or are now owned, held or used by the Grantor, in the Grantor's businesses, or with the Grantor's products and services, or in which the Grantor has any right, title or interest, or (iii) are in the future adopted, acquired, owned, held and used by the Grantor in the Grantor's business or with the Grantor's products and services, or in which the Grantor, in the future, acquires any right, title or interest.

use. With respect to any Trademark, all uses of such Trademark by, for or in connection with the Grantor or its businesses or for the direct or indirect benefit of the Grantor or its businesses, including all such uses by the Grantor itself, by any of the Grantor's affiliates, or by any franchisee, licensee or contractor of the Grantor.

Unless otherwise provided herein, the rules of interpretation set forth in §1.2 of the Credit Agreement shall be applicable to this Trademark Agreement.

## 2. GRANT OF SECURITY INTEREST.

2.1. Security Interest; Assignment of Marks. As collateral security for the payment and performance in full of all of the Obligations, the Grantor hereby unconditionally grants to the Administrative Agent, for the benefit of the Lenders, a continuing security interest in and first priority lien on the Pledged Trademarks, and pledges and mortgages (but does not transfer title to) the Pledged Trademarks to the Administrative Agent for the benefit of the Lenders. In addition, the Grantor has executed in blank and delivered to the Administrative Agent an assignment of United States federally registered trademarks in substantially the form of Exhibit 1 hereto (the "Assignment of Marks"). The Grantor hereby authorize the Administrative Agent to complete as assignee and record with the PTO the Assignment of Marks upon the occurrence and during the continuance of an Event of Default, and the proper exercise of the Administrative Agent's remedies under this Trademark Agreement and the Security Agreement.

**2.2. Conditional Assignment.** In addition to, and not by way of limitation of, the grant, pledge and mortgage of the Pledged Trademarks provided in §2.1, the Grantor grants, assigns, transfers, conveys and sets over to the Administrative Agent, for the benefit of the Lenders, the Grantor's entire right, title and interest in and to the Pledged Trademarks; provided that such grants, assignments, transfers and conveyances shall be and become of force and effect only (i) upon or after the occurrence and during the continuance of an Event of Default and (ii) either (A) upon the written demand of the Administrative Agent at any time during such continuance or (B) immediately and automatically (without notice or action of any kind by the Administrative Agent) upon an Event of Default for which acceleration of the Loans is automatic under the Credit Agreement or upon the sale or other disposition of or foreclosure upon the Collateral pursuant to the Security Agreement and applicable law (including the transfer or other disposition of the Collateral by the Grantor to the Administrative Agent or its nominee in lieu of foreclosure).

**2.3. Supplemental to Security Agreement.** Pursuant to the Security Agreement, the Grantor has granted to the Administrative Agent, for the benefit of the Lenders, a continuing charge and security interest in and lien on the Collateral (including the Pledged Trademarks). The Security Agreement, and all rights and interests of the Administrative Agent in and to the Collateral (including the Pledged Trademarks) thereunder, are hereby ratified and confirmed in all respects. In no event shall this Trademark Agreement, the grant, assignment, transfer and conveyance of the Pledged Trademarks hereunder, or the recordation of this Trademark Agreement (or any document hereunder) with the PTO, adversely affect or impair, in any way or to any extent, the Security Agreement, the charge on and security interest of the Administrative Agent in the Collateral (including the Pledged Trademarks) pursuant to the Security Agreement and this Trademark Agreement, the attachment and perfection of such security interest under the Uniform Commercial Code (including the security interest in the Pledged Marks), or any present or future rights and interests of the Administrative Agent in and to the Collateral under or in connection with the Security Agreement, this Trademark Agreement or the Uniform Commercial Code (or equivalent law under the applicable foreign jurisdiction). Any and all rights and interests of the Administrative Agent in and to the Pledged Trademarks (and any and all obligations of the Grantor with respect to the Pledged Trademarks) provided herein, or arising hereunder or in connection herewith, shall only supplement and be cumulative and in addition to the rights and interests of the Administrative Agent (and the obligations of the Grantor) in, to or with respect to the Collateral (including the Pledged Trademarks) provided in or arising under or in connection with the Security Agreement and shall not be in derogation thereof.

### **3. REPRESENTATIONS, WARRANTIES AND COVENANTS.**

The Grantor represents, warrants and covenants that: (i) Schedule A sets forth a true and complete list of all Trademarks and Trademark Registrations now owned, licensed, controlled or used by the Grantor; (ii) the Trademarks and Trademark Registrations listed on Schedule A are subsisting and have not been adjudged invalid or unenforceable, in whole or in part, and there is no litigation or proceeding pending



concerning the validity or enforceability of the Trademarks or Trademark Registrations; (iii) to the best of the Grantor's knowledge, each of the Trademarks and Trademark Registrations is valid and enforceable; (iv) to the best of the Grantor's knowledge, there is no infringement by others of the Trademarks, Trademark Registrations or the Trademark Rights associated therewith; (v) no claim has been made that the Grantor's use of any of the Trademarks does or may violate the rights of any third person, and to the best of the Grantor's knowledge, there is no infringement by the Grantor of the trademark rights of others; (vi) the Grantor is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of the Trademarks and each Trademark Registration listed on Schedule A, free and clear of any liens, charges, encumbrances and adverse claims, including pledges, assignments, licenses (except as set forth on Schedule A), registered user agreements and covenants by the Grantors not to sue third persons, other than the security interest and assignment created by the Security Agreement and this Trademark Agreement; (vii) the Grantor has the unqualified right to enter into this Trademark Agreement and to perform its terms and have entered and will enter into written agreements with each of its present and future agents, consultants, licensors and licensees that will enable it to comply with the covenants herein contained; (viii) the Grantor has used, and will continue to use, proper statutory and other appropriate proprietary notices in connection with its use of the Trademarks; (ix) the Grantor has used, and will continue to use for the duration of this Trademark Agreement, consistent standards of quality in its manufacture and provision of products and services sold or provided under the Trademarks; (x) this Trademark Agreement, together with the Security Agreement and the Deed of Charge over Intellectual Property, dated as of November 8, 2001, between the Grantor and the Administrative Agent, will create in favor of the Administrative Agent a valid and perfected first priority security interest in the Pledged Trademarks upon making the filings referred to in clause (xi) of this §3 and the recordation thereof by the PTO (or equivalent foreign recordation office); and (xi) except for the recording of this Trademark Agreement with the PTO and the filing of financing statements with the appropriate jurisdictions (or equivalent registration statements with respect to any foreign jurisdictions), no authorization, approval or other action by, and no notice to or filing with, any governmental or regulatory authority, agency or office is required either (A) for the grant by the Grantor or the effectiveness of the security interest and assignment granted hereby or for the execution, delivery and performance of this Trademark Agreement by the Grantor, or (B) for the perfection of or the exercise by the Administrative Agent of any of its rights and remedies hereunder.

#### **4. INSPECTION RIGHTS.**

The Grantor hereby grants to each of the Administrative Agent and the Lenders and its employees and agents the right to visit the Grantor's plants and facilities that manufacture, inspect or store products sold under any of the Trademarks, and to inspect the products and quality control records relating thereto at reasonable times during regular business hours.

## **5. NO TRANSFER OR INCONSISTENT AGREEMENTS.**

Without the Administrative Agent's prior written consent and except for licenses of the Pledged Trademarks in the ordinary course of the Grantor's business consistent with its past practices, the Grantor will not (i) mortgage, pledge, assign, encumber, grant a security interest in, transfer, license or alienate any of the Pledged Trademarks, or (ii) enter into any agreement (for example, a license agreement) that is inconsistent with the Grantor's obligations under this Trademark Agreement or the Security Agreement.

## **6. AFTER-ACQUIRED TRADEMARKS, ETC.**

**6.1. After-acquired Trademarks.** If, before the Obligations shall have been finally paid and satisfied in full, the Grantor shall obtain any right, title or interest in or to any other or new Trademarks, Trademark Registrations or Trademark Rights, the provisions of this Trademark Agreement shall automatically apply thereto and the Grantor shall promptly provide to the Administrative Agent notice thereof in writing and execute and deliver to the Administrative Agent such documents or instruments as the Administrative Agent may reasonably request further to implement, preserve or evidence the Administrative Agent's interest therein.

**6.2. Amendment to Schedule.** The Grantor authorizes the Administrative Agent to modify this Trademark Agreement and the Assignment of Marks, without the necessity of the Grantor's further approval or signature, by amending Exhibit A hereto and the Annex to the Assignment of Marks to include any future or other Trademarks, Trademark Registrations or Trademark Rights under §2 or §6.

## **7. TRADEMARK PROSECUTION.**

**7.1. Grantor Responsible.** The Grantor shall retain full and complete responsibility for the prosecution, defense, enforcement or any other necessary or desirable actions in connection with the Pledged Trademarks, and shall hold each of the Administrative Agent and the Lenders harmless from any and all reasonable costs, damages, liabilities and expenses that may be incurred by the Administrative Agent or any Lender in connection with the Administrative Agent's interest in the Pledged Trademarks or any other action or failure to act in connection with this Trademark Agreement or the transactions contemplated hereby. In respect of such responsibility, the Grantor shall retain trademark counsel acceptable to the Administrative Agent.

**7.2. Grantor's Duties, etc.** The Grantor shall have the right and the duty, through trademark counsel acceptable to the Administrative Agent, to prosecute diligently any trademark registration applications of the Trademarks pending as of the date of this Trademark Agreement or thereafter, to preserve and maintain all rights in the Trademarks and Trademark Registrations, including the filing of appropriate renewal applications and other instruments to maintain in effect the Trademark Registrations and the payment when due of all registration renewal fees and other fees, taxes and other expenses that shall be incurred or that shall accrue with respect to any of the Trademarks or Trademark Registrations. Any expenses incurred in connection with

such applications and actions shall be borne by the Grantor. The Grantor shall not abandon any filed trademark registration application, or any Trademark Registration or Trademark, without the consent of the Administrative Agent, which consent shall not be unreasonably withheld. Notwithstanding anything to the contrary contained in this §7.2, so long as no Event of Default has occurred and is continuing, nothing in this §7.2 shall require the Grantor to prosecute any trademark registration applications, preserve and maintain all rights in the Trademarks and Trademark Registrations or not abandon any trademark registration application, Trademark Registration or Trademark if the taking of such action is not in the Grantor's reasonable judgement desirable in the conduct of its business and the failure to take such action does not have a Materially Adverse Effect.

**7.3. Grantor's Enforcement Rights.** The Grantor shall have the right and the duty to bring suit or take other commercially reasonable action in the Grantor's own name to maintain and enforce the Trademarks, the Trademark Registrations and the Trademark Rights. The Grantor may require the Administrative Agent to join in such suit or action as necessary to assure the Grantor's ability to bring and maintain any such suit or action in any proper forum if (but only if) the Administrative Agent is completely satisfied that such joinder will not subject the Administrative Agent or any Lender to any risk of liability. The Grantor shall promptly, upon demand, reimburse and indemnify the Administrative Agent for all damages, costs and expenses, including reasonable legal fees, incurred by the Administrative Agent pursuant to this §7.3.

**7.4. Protection of Trademarks, etc.** In general, and except as otherwise permitted pursuant to the other provisions of this Trademark Agreement, the Grantor shall take any and all such actions (including institution and maintenance of suits, proceedings or actions) as may be necessary or appropriate to properly maintain, protect, preserve, care for and enforce the Pledged Trademarks. The Grantor shall not take or fail to take any action, nor permit any action to be taken or not taken by others under its control, that would adversely affect the validity, grant or enforcement of the Pledged Trademarks. Notwithstanding anything to the contrary contained in this §7.4, so long as no Event of Default has occurred and is continuing, nothing in this §7.4 shall require the Grantor take any action or not take any action, as the case may be, if such requirement is not in the Grantor's reasonable judgement desirable in the conduct of its business and the failure to take such action or not take such action, as the case may be, does not have a Materially Adverse Effect.

**7.5. Notification by Grantors.** Promptly upon obtaining knowledge thereof, the Grantor will notify the Administrative Agent in writing of the institution of, or any final adverse determination in, any proceeding in the PTO or any similar office or agency of the United States or any foreign country, or any court, regarding the validity of any of the Trademarks or Trademark Registrations or the Grantor's rights, title or interests in and to the Pledged Trademarks, and of any event that does or reasonably could materially adversely affect the value of any of the Pledged Trademarks, the ability of the Grantor or the Administrative Agent to dispose of any of the Pledged Trademarks or the

rights and remedies of the Administrative Agent in relation thereto (including but not limited to the levy of any legal process against any of the Pledged Trademarks).

### **8. REMEDIES.**

Upon the occurrence and during the continuance of an Event of Default, the Administrative Agent shall have, in addition to all other rights and remedies given it by this Trademark Agreement (including, without limitation, those set forth in §2.2, the Credit Agreement, the Security Agreement and the other Loan Documents, those allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code as enacted in the Commonwealth of Massachusetts, and, without limiting the generality of the foregoing, the Administrative Agent may immediately, without demand of performance and without other notice (except as set forth next below) or demand whatsoever to the Grantor, all of which are hereby expressly waived, sell or license at public or private sale or otherwise realize upon the whole or from time to time any part of the Pledged Trademarks, or any interest that the Grantor may have therein, and after deducting from the proceeds of sale or other disposition of the Pledged Trademarks all expenses incurred by the Administrative Agent in attempting to enforce this Trademark Agreement (including all reasonable expenses for broker's fees and legal services), shall apply the residue of such proceeds toward the payment of the Obligations as set forth in or by reference in the Security Agreement. Notice of any sale, license or other disposition of the Pledged Trademarks shall be given to the Grantor at least five (5) Business Days before the time that any intended public sale or other public disposition of the Pledged Trademarks is to be made or after which any private sale or other private disposition of the Pledged Trademarks may be made, which the Grantor hereby agrees shall be reasonable notice of such public or private sale or other disposition. At any such sale or other disposition, the Administrative Agent may, to the extent permitted under applicable law, purchase or license the whole or any part of the Pledged Trademarks or interests therein sold, licensed or otherwise disposed of.

### **9. COLLATERAL PROTECTION.**

If the Grantor shall fail to do any act that it has covenanted to do hereunder, or if any representation or warranty of the Grantor shall be breached, the Administrative Agent, in its own name or that of the Grantor (in the sole discretion of the Administrative Agent), may (but shall not be obligated to) do such act or remedy such breach (or cause such act to be done or such breach to be remedied), and the Grantor agrees promptly to reimburse the Administrative Agent for any reasonable cost or expense incurred by the Administrative Agent in so doing.

### **10. POWER OF ATTORNEY.**

If any Event of Default shall have occurred and be continuing, the Grantor does hereby make, constitute and appoint the Administrative Agent (and any officer or agent of the Administrative Agent as the Administrative Agent may select in its exclusive discretion) as the Grantor's true and lawful attorney-in-fact, with full power of substitution and with the power to endorse the Grantor's names on all applications,

documents, papers and instruments necessary for the Administrative Agent to use the Pledged Trademarks, or to grant or issue any exclusive or nonexclusive license of any of the Pledged Trademarks to any third person, or to take any and all actions necessary for the Administrative Agent to assign, pledge, convey or otherwise transfer title in or dispose of any of the Pledged Trademarks or any interest of the Grantor therein to any third person, and, in general, to execute and deliver any instruments or documents and do all other acts that the Grantor is obligated to execute and do hereunder. The Grantor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof and releases each of the Administrative Agent and the Lenders from any claims, liabilities, causes of action or demands arising out of or in connection with any action taken or omitted to be taken by the Administrative Agent under this power of attorney (except for the Administrative Agent's gross negligence or willful misconduct). This power of attorney is coupled with an interest given by way of security, and shall be irrevocable for the duration of this Trademark Agreement.

#### **11. FURTHER ASSURANCES.**

The Grantor shall, at any time and from time to time, and at its own expense, make, execute, acknowledge and deliver, and file and record as necessary or appropriate with governmental or regulatory authorities, agencies or offices, such agreements, assignments, documents and instruments, and do such other and further acts and things (including, without limitation, obtaining consents of third parties), as the Administrative Agent may reasonably request or as may be necessary or appropriate in order to implement and effect fully the intentions, purposes and provisions of this Trademark Agreement, or to assure and confirm to the Administrative Agent the grant, perfection and priority of the Agent's security interest in the Pledged Trademarks.

#### **12. TERMINATION.**

At such time as all of the Obligations have been finally paid and satisfied in full (other than contingent indemnification obligations not then due and payable), this Trademark Agreement shall terminate and the Administrative Agent shall, upon the written request and at the expense of the Grantor, execute and deliver to the Grantor all deeds, assignments and other instruments as may be necessary or proper to reassign and reconvey to and re-vest in the Grantor the entire right, title and interest to the Pledged Trademarks previously granted, assigned, transferred and conveyed to the Administrative Agent by the Grantor pursuant to this Trademark Agreement, as fully as if this Trademark Agreement had not been made, subject to any disposition of all or any part thereof that may have been made by the Administrative Agent pursuant hereto or the Security Agreement.

#### **13. COURSE OF DEALING.**

No course of dealing between the Grantor and the Administrative Agent, nor any failure to exercise, nor any delay in exercising, on the part of the Administrative Agent, any right, power or privilege hereunder or under the Security Agreement or any other agreement shall operate as a waiver thereof; nor shall any single or partial exercise

of any right, power or privilege hereunder or thereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

**14. EXPENSES.**

Any and all reasonable fees, costs and expenses, of whatever kind or nature, including the reasonable attorneys' fees and expenses incurred by the Administrative Agent in connection with the preparation of this Trademark Agreement and all other documents relating hereto, the consummation of the transactions contemplated hereby or the enforcement hereof, the filing or recording of any documents (including all taxes in connection therewith) in public offices, the payment or discharge of any taxes, counsel fees, maintenance or renewal fees, encumbrances, or otherwise protecting, maintaining or preserving the Pledged Trademarks, or in defending or prosecuting any actions or proceedings arising out of or related to the Pledged Trademarks, shall be borne and paid by the Grantor.

**15. OVERDUE AMOUNTS.**

Until paid, all amounts due and payable by the Grantor hereunder shall be a debt secured by the Pledged Trademarks and other Collateral and shall bear, whether before or after judgment, interest at the rate of interest for overdue principal set forth in the Credit Agreement.

**16. NO ASSUMPTION OF LIABILITY; INDEMNIFICATION.**

**NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, NEITHER THE ADMINISTRATIVE AGENT NOR ANY LENDER ASSUMES ANY LIABILITIES OF THE GRANTOR WITH RESPECT TO ANY CLAIM OR CLAIMS REGARDING THE GRANTOR'S OWNERSHIP OR PURPORTED OWNERSHIP OF, OR RIGHTS OR PURPORTED RIGHTS ARISING FROM, ANY OF THE PLEDGED TRADEMARKS OR ANY USE, LICENSE OR SUBLICENSE THEREOF, WHETHER ARISING OUT OF ANY PAST, CURRENT OR FUTURE EVENT, CIRCUMSTANCE, ACT OR OMISSION OR OTHERWISE. ALL OF SUCH LIABILITIES SHALL BE EXCLUSIVELY THE RESPONSIBILITY OF THE GRANTOR, AND THE GRANTOR SHALL INDEMNIFY THE ADMINISTRATIVE AGENT AND THE LENDERS FOR ANY AND ALL REASONABLE COSTS, EXPENSES, DAMAGES AND CLAIMS, INCLUDING REASONABLE LEGAL FEES, INCURRED BY THE ADMINISTRATIVE AGENT OR ANY LENDER WITH RESPECT TO SUCH LIABILITIES.**

**17. NOTICES.**

All notices and other communications made or required to be given pursuant to this Trademark Agreement shall be in writing and shall be delivered in hand, mailed by United States registered or certified first-class mail, postage prepaid, or sent by telegraph, teletype or telex and confirmed by delivery via courier or postal service, addressed as follows:

(a) if to the Grantor, at 9420 Key West Avenue, Rockville, Maryland 20850, Attention: President, or at such other address for notice as the Grantor shall last have furnished in writing to the person giving the notice, with copies to Kirkland & Ellis, 200 East Randolph Drive, Chicago, Illinois 60601, Attention: Gary M. Holihan, Esq. and Elizabeth A. Davidson, Esq.; and

(b) if to the Administrative Agent, at 100 Federal Street, Boston, MA 12110, or at such other address for notice as the Administrative Agent shall last have furnished in writing to the person giving the notice.

Any such notice or demand shall be deemed to have been duly given or made and to have become effective (i) if delivered by hand to a responsible officer of the party to which it is directed, at the time of the receipt thereof by such officer, (ii) if sent by registered or certified first-class mail, postage prepaid, two (2) Business Days after the posting thereof, and (iii) if sent by telegraph, telecopy, or telex, at the time of the dispatch thereof, if in normal business hours in the country of receipt, or otherwise at the opening of business on the following Business Day.

#### **18. AMENDMENT AND WAIVER.**

This Trademark Agreement is subject to modification only by a writing signed by the Administrative Agent (with the consent of the Required Lenders) and the Grantor, except as provided in §6.2. The Administrative Agent shall not be deemed to have waived any right hereunder unless such waiver shall be in writing and signed by the Administrative Agent and the Required Lenders. A waiver on any one occasion shall not be construed as a bar to or waiver of any right on any future occasion.

#### **19. GOVERNING LAW; CONSENT TO JURISDICTION.**

(a) **THIS TRADEMARK AGREEMENT IS INTENDED TO TAKE EFFECT AS A SEALED INSTRUMENT AND SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE COMMONWEALTH OF MASSACHUSETTS.** The Grantor agrees that any suit for the enforcement of this Trademark Agreement may be brought in the courts of the Commonwealth of Massachusetts or any federal court sitting therein and consents to the non-exclusive jurisdiction of such court and to service of process in any such suit being made upon the Grantor by mail at the address specified in §17. The Grantor hereby waives any objection that it may now or hereafter have to the venue of any such suit or any such court or that such suit is brought in an inconvenient court.

(b) The Grantor irrevocably and unconditionally appoints C T Corporation Systems, with an office on the date hereof at 101 Federal Street, Suite 300, Boston, Massachusetts 02110 (the "Process Agent"), as its agent to receive on behalf of the Grantor and its property service of copies of the summons and complaint and any other process which may be served in any such action or proceeding in any such court of the Commonwealth of Massachusetts or any Federal court sitting therein and agrees promptly to appoint a successor Process Agent. In any such action or proceeding in

such court of the Commonwealth of Massachusetts or Federal court sitting therein, such service may be made on the Grantor by delivering a copy of such process to the Grantor in care of the appropriate Process Agent at such Process Agent's above address and by depositing a copy of such process in the mails by certified or registered air mail, addressed to the Grantor at its address referred to in §17 hereof (such service to be effective upon such receipt by the appropriate Process Agent and the depositing of such process in the mails as aforesaid). The Grantor hereby irrevocably and unconditionally authorizes and directs such Process Agent to accept such service on its behalf. As an alternate method of service, the Grantor also irrevocably and unconditionally consents to the service of any and all process in any such action or proceeding in such court of the Commonwealth of Massachusetts or any Federal court sitting therein by mailing of copies of such process to the Grantor, by certified or registered air mail at its address referred to in §17. The Grantor hereby agrees that, to the fullest extent permitted by applicable law, a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(c) To the extent that the Grantor has or hereafter may acquire any immunity (sovereign or otherwise) from any legal action, suit or proceeding, from jurisdiction of any court or from set-off or any legal process (whether service or notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise) with respect to itself or any of its property, the Grantor hereby irrevocably waives and agrees not to plead or claim such immunity in respect of its obligations under this Agreement or the Security Agreement.

(d) The Grantor hereby agrees that the waivers set forth in this §19 shall have the fullest extent permitted under the Foreign Sovereign Immunities Act of 1976 of the United States of America and are intended to be irrevocable and not subject to withdrawal for purposes of such Act.

## **20. WAIVER OF JURY TRIAL.**

**THE GRANTOR WAIVES ITS RIGHT TO A JURY TRIAL WITH RESPECT TO ANY ACTION OR CLAIM ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS TRADEMARK AGREEMENT, ANY RIGHTS OR OBLIGATIONS HEREUNDER OR THE PERFORMANCE OF ANY SUCH RIGHTS OR OBLIGATIONS.** Except as prohibited by law, the Grantor waives any right which it may have to claim or recover in any litigation referred to in the preceding sentence any special, exemplary, punitive or consequential damages or any damages other than, or in addition to, actual damages. The Grantor (i) certifies that neither the Administrative Agent or any Lender nor any representative, agent or attorney of the Administrative Agent or any Lender has represented, expressly or otherwise, that the Administrative Agent or any Lender would not, in the event of litigation, seek to enforce the foregoing waivers, and (ii) acknowledges that, in entering into the Credit Agreement and the other Loan Documents to which the Administrative Agent or any Lender is a party, the Administrative Agent and the Lenders are relying upon, among other things, the waivers and certifications contained in this §20.



**21. MISCELLANEOUS.**

The headings of each section of this Trademark Agreement are for convenience only and shall not define or limit the provisions thereof. This Trademark Agreement and all rights and obligations hereunder shall be binding upon the Grantor and its respective successors and assigns, and shall inure to the benefit of the Administrative Agent, the Lenders and their respective successors and assigns. The provisions of §14.5 of the Credit Agreement are incorporated herein by reference. In the event of any irreconcilable conflict between the provisions of this Trademark Agreement and the Credit Agreement, or between this Trademark Agreement and the Security Agreement, the provisions of the Credit Agreement or the Security Agreement, as the case may be, shall control. If any term of this Trademark Agreement shall be held to be invalid, illegal or unenforceable, the validity of all other terms hereof shall in no way be affected thereby, and this Trademark Agreement shall be construed and be enforceable as if such invalid, illegal or unenforceable term had not been included herein. The Grantor acknowledges receipt of a copy of this Trademark Agreement.

***[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]***





**SCHEDULE A**

**Trademarks and Trademark Registrations**

Trademark or <u>Service Mark</u>	Registrations -- United States Patent and Trademark Office		
	<u>Registration No.</u>	<u>Registration Date</u>	<u>Renewal Date</u>
DATADIRECT (stylized)	2000319	September 10, 1996	September 10, 2006
SEQUELINK	1569450	December 5, 1989	December 5, 2009
DATADIRECT CONNECT OLE DB	2320210	February 22, 2000	February 22, 2010

Trademark or <u>Service Mark</u>	Pending Applications -- United States Patent and Trademark Office	
	<u>Serial No.</u>	<u>Filing Date</u>
DATADIRECT CONNECT	75/468012	April 14, 1998

Trademark or <u>Service Mark</u>	Registrations -- United Kingdom Trademark Office	
	<u>Registration No.</u>	<u>Registration Date</u>
SEQUELINK (class9)	1400943	July 17, 1992
SEQUELINK (class35)	1400944	February 21, 1992
SEQUELINK (class42)	1400945	January 31, 1992

**Unregistered Trademarks**

DataDirect SequeLink Desktop  
DataDirect SequeLink Per CPU  
DataDirect Connect Per Desktop  
DataDirect Connect Per CPU  
DataDirect Connect for SAP desktop  
DataDirect Connect for SAP server

## Tradenames

DataDirect  
DataDirect Connect  
EDC  
Enterprise Data Connectivity  
MERANT DataDirect

## Logos

See attached.

## Exceptions to Section 3(vi)

- 1) Agreements between Grantor or any of its Affiliates and their customers for software products entered into in the ordinary course of business.
- 2) OEM License Agreement for DataDirect ODBC and JDBC Products dated as of the date hereof between Merant plc and DataDirect Technologies.
- 3) OEM License Agreement for DataDirect dated as of the date hereof between Micro Focus International Ltd. and DataDirect Technologies.

EXHIBIT 1

ASSIGNMENT OF TRADEMARKS AND SERVICE MARKS (U.S.)

WHEREAS, DATADIRECT TECHNOLOGIES, a company incorporated in the Cayman Islands with limited liability (the "Grantor"), has adopted and used and is using the trademarks and service marks (the "Marks") identified on the Annex hereto, and is the owner of the registrations of and pending registration applications for such Marks in the United States Patent and Trademark Office identified on such Annex; and

WHEREAS, \_\_\_\_\_, a \_\_\_\_\_ organized and existing under the laws of the State of \_\_\_\_\_, (the "Assignee"), is desirous of acquiring the Marks and the registrations thereof and registration applications therefor;

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, the Grantor does hereby assign, sell and transfer unto the Assignee all right, title and interest in and to the Marks, together with (i) the registrations of and registration applications for the Marks, (ii) the goodwill of the business symbolized by and associated with the Marks and the registrations thereof, and (iii) the right to sue and recover for, and the right to profits or damages due or accrued arising out of or in connection with, any and all past, present or future infringements or dilution of or damage or injury to the Marks or the registrations thereof or such associated goodwill.

This Assignment of Trademarks and Service Marks (U.S.) is intended to and shall take effect as a sealed instrument at such time as the Assignee shall complete this instrument by inserting its name in the second paragraph above and signing its acceptance of this Assignment of Trademarks and Service Marks (U.S.) below.

IN WITNESS WHEREOF, the Grantor, by its duly authorized officer, has executed this assignment, as an instrument under seal, on this \_\_\_ day of \_\_\_\_\_, 2001.

**DATADIRECT TECHNOLOGIES**

By: \_\_\_\_\_

Name:

Title:

The foregoing assignment of the Marks and the registrations thereof and registration applications therefor by the Grantor to the Assignee is hereby accepted as of the \_\_\_ day of \_\_\_\_\_, 200\_.

\_\_\_\_\_

By: \_\_\_\_\_

Name:

Title:

COMMONWEALTH OR STATE OF \_\_\_\_\_ )

) ss.

COUNTY OF \_\_\_\_\_ )

On this the \_\_\_ day of \_\_\_\_\_, 2001, before me appeared \_\_\_\_\_, the person who signed this instrument, who acknowledged that (s)he is the \_\_\_\_\_ of DataDirect Technologies and that being duly authorized (s)he signed such instrument as a free act on behalf of DataDirect Technologies.

\_\_\_\_\_  
Notary Public

My commission expires:

[Seal]

ANNEX

Trademark or <u>Service Mark</u>	Registrations -- United States Patent and Trademark Office		
	<u>Registration No.</u>	<u>Registration Date</u>	<u>Renewal Date</u>
DATADIRECT (stylized)	2000319	September 10, 1996	September 10, 2006
SEQUELINK	1569450	December 5, 1989	December 5, 2009
DATADIRECT CONNECT OLE DB	2320210	February 22, 2000	February 22, 2010

Trademark or <u>Service Mark</u>	Pending Applications -- United States Patent and Trademark Office	
	<u>Serial No.</u>	<u>Filing Date</u>
DATADIRECT CONNECT	75/468012	April 14, 1998