

Parties

- (1) SpiderGroup of First Floor, Alexander House, Telephone Avenue, Bristol BS1 4BS ('the Company') SpiderGroup is the Trading name of 13 Spiders Ltd; and
(2) _____ ('the Client')

RECITALS

The Client wishes to appoint the Company to provide certain information technology, computer, management support and maintenance services, to the Client and the Company has agreed to provide such services on the terms of this Agreement.

1 Definitions

1.1 In this Agreement (which expression includes the Recitals, and any Annexures to this Agreement) the following words and phrases shall, unless the context otherwise requires, have the following meanings:

'Change Control Procedure'	the procedure set out in clause 8
'Change Request'	the meaning ascribed to it in clause 8
'Change Order'	the meaning ascribed to it in clause 8
'Client IT'	any components of the Client's current IT infrastructure (including but not limited to cabling, hardware and software)
'Dispute Resolution Procedure'	the procedure set out in clause 27
'Effective Date'	the date of this agreement
'Intellectual Property'	property in which intellectual property rights of whatever nature (including but not limited to patents, trade marks, service marks, design rights, database rights, know-how rights, goodwill, reputation, get-up, logos, devices, plans, models, data, diagrams, specifications, source and object code materials, data and processes, design rights, trade or business name rights, rights in confidential information, present contingent and future copyright, rights to sue for passing-off, plus applications or rights to apply for any of the foregoing) subsist
'month'	a calendar month and 'monthly' shall be construed accordingly
'Premises'	the premises occupied by the Client
'Required Service Level'	in respect of any Service in any period means the standard of performance referred to in clause 2.2 in the provision of that Service in the period in question
'Services'	the services to be provided by the Company to the Client as set out in Annex A
'Service Charges'	the charges levied by the Company for the Services in accordance with the tariffs, scales, charges, invoicing methods and terms of payment as set out in Annex A
'Third Party Provider'	the provider of any of the third party products
'VAT'	value added tax

- 1.2 In the case of conflict or ambiguity between any provision contained in the body of this Agreement and any provision contained in any Annex, the provision in the body of this Agreement shall take precedence.

2 Supply of Services

- 2.1 The Company will provide the Services to the Client with effect from the Effective Date for the duration of this Agreement in accordance with the provisions of this Agreement.
- 2.2 The service levels to be given by the Company when supplying the Services to the Client shall be in accordance with the Service Level statement set out in Annex A.
- 2.3 The Company agrees to provide the Services in accordance with the quotation but that quotation shall be amended to the extent reasonably necessary in order to reflect:
- 2.3.1 any breach of any obligations of the Client under
- 2.3.2 this Agreement and/or negligence by it; and/or
- 2.3.3 any cause of delay which was beyond the reasonable control of the Company.
- 2.4 The Client shall ensure that adequate virus protection software shall be installed upon all computer systems to which the Company requires access for the purpose of performing any Service.

3 Company's obligations

- 3.1 The Company will provide the Services with reasonable skill and care in accordance with relevant industry best practice.
- 3.2 In the provision of the Services, the Company shall use personnel who possess a degree of skill and experience which is appropriate to the tasks to which they are allotted and who shall perform those tasks in a workmanlike and professional manner.

4 Client's obligations and warranties

- 4.1 The Client undertakes throughout the term of this Agreement to:
- 4.1.1 enter into and maintain contracts directly with Third Party Providers and ensure that such contracts permit the Company to request resources from each Third Party Provider on behalf of the Client when required in order to carry out the Services;
- 4.1.2 keep in place current software maintenance agreements with the vendors of all supported software applications used by the Client to ensure adequate assistance from such vendors if required;
- 4.1.3 grant to the Company such access to and such facilities at the Premises as the Company may require from time to time in order to discharge its obligations under this

Agreement;

- 4.1.4 take all reasonable precautions to protect the health and safety of the Company's personnel, agents and sub-contractors whilst at the Premises, if the Company requires access.
- 4.1.5 provide the Company with all assistance, materials and accurate information for the purposes of enabling the Company to provide the Services;
- 4.1.6 ensure that all personnel assigned by it to provide assistance to the Company shall have the requisite skill, qualification and experience to perform the tasks assigned to them.
- 4.2 The Client warrants that it is the owner of all the Client IT (including any machines, drawings, connectors, cables, parts or other items, computer room documents, manuals, tapes, disk media, items of furniture and other equipment which is the subject of Services to be provided by the Company), or is authorised by the owner thereof to make them available to the Company if necessary.
- 4.3 The Client warrants that the details of the existing hardware and software it uses and all current licences it holds for software are complete and accurate.
- 4.4 The Client warrants that all data and other information provided by it shall not be obscene, defamatory or likely to result in any claim being made against the Company by any third party.
- 4.5 The Client warrants that it will not use the services provided by the Company for any immoral, unlawful or illegal purpose in particular, but not limited to, any use that breaches the Privacy and Electronic Communications (EC Directive) Regulations 2003.

5 Acceptance of software

- 5.1 In certain circumstances the Company may supply bespoke software compiled by the Company. Where the Company supplies such software to the Client, such software shall be subject to acceptance by the Client pursuant to this clause.
- 5.2 Should the Company install bespoke software, it shall supply to the Client immediately after installation of any software, test data which in the reasonable opinion of the parties is suitable to test whether the software performs to the specification agreed between the parties. The Client shall not be entitled to object to such test data or expected results unless the Client can demonstrate to the Company that they are not suitable for testing the software as aforesaid, in which event the Company shall make any reasonable amendments to such test data and expected results as the Client may request. Subject to the receipt of such test data and expected results, the Client shall process such data, in the presence of the Company or its authorised representative, by way of acceptance testing within 7

days after such receipt at a time mutually convenient to both parties.

- 5.3 The Client shall accept the software immediately after the Company has demonstrated that the software has correctly processed the test data by achieving the expected results.
- 5.4 In the event of failure of the software to pass the tests referred to in clause 5.2 above the Company shall, and in any event not later than 3 days following notification of the relevant failure, at its own expense correct the errors in the software and notify the Client that it is ready to repeat the tests and such tests shall be repeated within 7 days after such notice at a time mutually convenient to both parties.
- 5.5 In the event of failure of the software to pass the repeat tests referred to in clause 5.2 above, the Client shall be entitled to terminate this Agreement pursuant to clause 18.5 or, by notice to the Client, within 3 days require the Company to correct the errors in the software in which event the provisions of clause 5.4 shall apply.
- 5.6 Notwithstanding the above, installation of the software shall be deemed to be completed and the software shall be deemed to be accepted upon successful execution of the tests referred to above or when the software has been put into operational use, whichever is the earlier.
- 5.7 This clause 5 shall not apply to any third party software supplied such as Microsoft applications or software.

6 Service charges and payments

- 6.1 In consideration of the provision of the Services by the Company the Client shall pay to the Company the Service Charges without any set-off, counterclaim or other deduction whatsoever.
- 6.2 Clients operating a subscription based service shall be invoiced 28 days in advance and must pay by direct debit on the first of the month.
- 6.3 Any additional Service Charges shall be invoiced by the Company to the Client monthly in arrears accompanied by any substantiating documentation which may be reasonably required by the Client.
- 6.4 Payment for any project work will be agreed on a case by case basis.
- 6.5 All Service Charges and payments to be made by the Client under this Agreement are stated exclusive of VAT which shall additionally be paid by the Client where relevant at the rate and from time to time in the manner prescribed by law.
- 6.6 All Service Charges are exclusive of the Company's reasonable expenses incurred in connection with the provision of the Services which shall be payable by the Client in addition.
- 6.7 If the Client fails to make any payment (which is not the subject of a bona fide dispute) due to the Company in full within 5 days of the due date and has failed to give a reasonable written explanation for such failure to the

Company, then, without prejudice to any other right or remedy, the Company shall be entitled to:

- 6.7.1 suspend performance of any Services until all sums due to the Company have been paid in full (but only after having given written notice to Client of its intention so to do);
- 6.7.2 charge the Client interest (both before and after any judgment) according to The Late Payment Of Commercial Debts Act 1998 from the due date until the actual date of receipt of such amount by the Company; and
- 6.7.3 charge the Client for costs in accordance with The Late Payment Of Commercial Debts Act 1998. This may include without limitation, reasonable legal fees, bank charges and reconnection fees.
- 6.8 The Company reserves the right, by giving notice to the Client at any time before performance of the relevant Services to increase the price of such Services to reflect any increase in the cost to the Company which is due to an act or omission of the Client including but not limited to any change in the date for the performance of Services or any delay caused by any instructions of the Client or failure by the Client to give the Company adequate information or instructions.

7 Failure to meet Required Service Level on Specific Projects

- 7.1 The Company shall provide monthly service level reports to the Client on specific projects in accordance with the Service Level statement set out in Annex A
- 7.2 If the Company fails to provide the Services in accordance with the Required Service Levels measured over any 3-monthly period the Client shall be entitled to terminate this Agreement upon giving at least 10 days notice to the Company expiring not later than the end of the month following the relevant 3-month period.
- 7.3 The Company shall not be liable for any failure to achieve the Required Service Levels to the extent that such failure results from:
- 7.3.1 a breach by the Client of any of its obligations under this Agreement;
- 7.3.2 a failure, non compatibility or inefficiency of the Client's IT
- 7.3.3 an event of force majeure falling within the scope of clause 15.
- 7.4 In the event that the parties are unable to agree upon the cause of the failure to reach the Required Service Level or the extent to which the Required Service Levels may be adjusted, the matter shall be reverted to an expert for determination in accordance with the Dispute Resolution Procedure.
- 7.5 In the event the company is providing a service which has an uptime objective, this will be stated in Annex A

relevant to the service being provided.

9 Co-operation between the parties

The Client's Authorised Representative shall deal with any Change Control Procedure. The Client shall not change its Authorised Representative without prior consultation with the Company.

10 Term of this Agreement

This Agreement shall commence on the Effective Date and shall, subject to prior termination provided for under this Agreement, continue for an initial period set out in the Service Level Agreement in Annex A and thereafter indefinitely, unless terminated by either party upon giving written notice, as per the relevant period set out in the Service Level Agreement in Annex A or 1 month, whichever is the longer, of termination of the Agreement, such notice to expire on, or at any time after, the expiration of the initial period.

11 Assignments and successors

- 11.1 This Agreement is personal to the parties and, subject to clause 11.2 below, neither this Agreement nor any rights, licences or obligations under it may be assigned by either party without the prior written approval of the other party.
- 11.2 Notwithstanding the foregoing, either party may assign this Agreement to any acquirer of all or of substantially all of such party's equity securities, assets or business relating to the subject matter of this Agreement or to any entity controlled by, that controls, or is under common control with a party to this Agreement. Any attempted assignment in violation of this clause will be void and without effect.
- 11.3 This agreement shall be binding upon, and inure to the benefit of, the parties and their respective successors and permitted assignees, and references to a party in this Agreement shall include its successors and permitted assignees.
- 11.4 In this Agreement references to a party include references to a person:
 - 11.4.1 who for the time being is entitled (by assignment, novation or otherwise) to that party's rights under this Agreement (or any interest in those rights); or
 - 11.4.2 who, as administrator, liquidator or otherwise, is entitled to exercise those rights, and in particular those references include a person to whom those rights (or any interest in those rights) are transferred or pass as a result of a merger, division, reconstruction or other reorganisation involving that party. For this purpose, references to a party's rights under this Agreement include any similar rights to which another person becomes entitled as a result of a novation of this Agreement.

12 Intellectual Property rights

8 Change control

- 8.1 For the purposes of this Agreement a 'Change Request' is:
 - 8.1.1 a request to change (including to cease) any service or add new services to the Services; or
 - 8.1.2 a request to amend this Agreement or any document attached to it or referred to in this Agreement; or
 - 8.1.3 any proposal which causes or is likely to cause the Client to incur costs or charges outside the scope of the Service Charges.

A Change Request shall become a 'Change Order' when the requirements of the Change Control Procedure have been satisfied and the Change Request is signed by the Authorised Representatives of both parties to signify their approval of the change.

- 8.2 Change Requests may be originated either by the Client or by the Company.
- 8.3 Where the Company originates a Change Request it shall provide, with the Change Request, details of the impact which the proposed change will have upon the Services; the Implementation Plan; the Required Service Levels; any systems or operations of the Client which communicate with, or are otherwise affected by the Services; the Service Charges; and the other terms of this Agreement.
- 8.4 Where the Client originates a Change Request, the Company shall provide the Client, within 21 days of receiving the Change Request, details of the impact which the proposed change will have upon the Services; the Required Service Levels; any systems or operations of the Client which communicate with, or are otherwise affected by the Services; the Service Charges; and the other terms of this Agreement.
- 8.5 Save where otherwise stated in this Agreement, neither party shall be obliged to agree a Change Request originated by the other.
- 8.6 The costs of implementing a Change Order shall be borne as set out in the Change Order or initiation document.
- 8.7 The Company shall be entitled to charge the Client for work undertaken by the Company in analysing the effect of any proposed Change Request. Where the Company wishes to make a charge for carrying out such analysis, it will first notify the Client in writing, in order to allow the Client to choose whether or not to authorise the Company to proceed with the analysis of the requested change.
- 8.8 The Company reserves the right at any time without notifying the Client to make changes to any Services which are necessary to comply with any applicable safety or other statutory requirement provided that such variation does not materially affect the quality or performance anticipated by the Client.

- 12.1 In the absence of prior written agreement to the contrary, all Intellectual Property created by the Company or any employee, agent or sub-contractor of the Company in the course of performing the Services shall vest in the Company.
- 12.2 Where, in connection with the provision of the Services, the Client uses any Intellectual Property which is owned by the Company, the Company shall grant to the Client, or shall procure that the Client is granted (without charge to the Client and for the benefit of the Client) an indefinite non-exclusive, royalty-free licence to use, adapt, maintain and support such Intellectual Property, which licence shall include the right for any person providing services to the Client to use, adapt, maintain and support such Intellectual Property for the benefit of the Client.
- 12.3 In the absence of prior written agreement to the contrary, all Intellectual Property in the Client IT and any other information, materials or assets supplied to the Company by the Client shall remain vested in the Client or its third party licensors. The Client shall grant or shall procure the grant of a licence to the Company to utilise the Client IT or such other information, materials or assets to the extent required for the provision of the Services.
- 12.4 Unless stated expressly in writing in this Agreement, neither party will acquire any ownership interest in or licence of the other's Intellectual Property by virtue of this Agreement.
- 12.5 The Client shall defend any claim (at the Client's expense) brought against the Company alleging that the use of Client IT infringes the Intellectual Property of a third party including infringement of rights which arise as a result of storage or processing of any Client IT on the Company's systems and/or the provision of any information, materials or other assets to the Company by the Client ('IPR Claim'). The Client shall pay all costs and damages awarded or agreed to in settlement of an IPR Claim provided that the Company:
- 12.5.1 furnishes the Client with prompt written notice of the IPR Claim;
- 12.5.2 provides the Client with reasonable assistance in respect of the IPR Claim;
- 12.5.3 gives the Client the sole authority to defend or settle the IPR Claim.
- 12.6 The Company shall defend any claim (at the Company's expense) brought against the Client alleging that the provision of the Services or the use of any deliverables provided by the Company infringes the Intellectual Property of a third party ('IPR Claim'). The Company shall pay all costs and damages awarded or agreed to in settlement of an IPR Claim provided that the Client:
- 12.6.1 furnishes the Company with prompt written notice of the IPR Claim;

- 12.6.2 provides the Company with reasonable assistance in respect of the IPR Claim;
- 12.6.3 gives the Company the sole authority to defend or settle the IPR Claim.

13 Confidentiality

- 13.1 Both parties to this Agreement undertake, except as provided below, to treat as confidential and keep secret all information marked 'confidential' or which may reasonably be supposed to be confidential supplied by the Company or the Client (in this Agreement collectively referred to as 'the Information') with the same degree of care as it employs with regard to its own confidential information of a like nature and in any event in accordance with best current commercial security practices, provided that, this clause shall not extend to any information which was rightfully in the possession of either party prior to the commencement of the negotiations leading to this Agreement or which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this clause).
- 13.2 Neither party shall without the prior written consent of the other party divulge any part of the other party's Information to any person except:
- 13.2.1 to their own employees, consultants or sub-contractors and then only to those employees, consultants or sub-contractors who need to know the Information for the purposes of this Agreement; and
- 13.2.2 to either party's accountants, the Inland Revenue, HM Customs and Excise, a court of competent jurisdiction, governmental body or applicable regulatory authority and any other persons or bodies having a right duty or obligation to know the business of the other party and then only in pursuance of such right duty or obligation.
- 13.3 Both parties undertake to ensure that persons and bodies referred to in clause 13.2 are made aware prior to the disclosure of any part of the Information that the same is confidential and that they owe a duty of confidence to the other party.
- 13.4 Each party to this Agreement shall promptly notify the other party if it becomes aware of any breach of confidence by any person to whom it divulges all or any part of the Information and shall give the other party all reasonable assistance in connection with any proceedings which the other party may institute against such person for breach of confidence.
- 13.5 The foregoing obligations as to confidentiality shall remain in full force and effect notwithstanding any termination of this Agreement.
- 13.6 Provided that it is not in breach of the confidentiality obligations set out above, the Company may refer to and publicise its involvement with the Client, but only with the Client's prior written approval in relation to each publication, which shall not be unreasonably withheld or

delayed.

14 Security

- 14.1 If any of the information required by the Company to provide the Services changes, including any changes to the Client's payment and contact details, the Client shall inform the Company immediately, in writing.
- 14.2 The usernames and passwords are essential for secure use of the service and must be kept confidential and secure by the Client and used in accordance with any instructions issued by the Company.
- 14.3 If the Client requests the Company to re-issue usernames and passwords, they will be issued to the Authorised Person to the address given by the Client either by post, fax or e-mail and not verbally over the telephone unless the Client is given a security code.
- 14.4 If there is a breach of security or misuse of the service, the Company may change or suspend the Client's password. If this occurs, the Company will notify the Client of this change.

15 Force majeure

Notwithstanding anything else contained in this Agreement, neither party shall be liable for any delay in performing its obligations hereunder if such delay is caused by circumstances beyond its reasonable control (including without limitation any delay caused by any act or omission of the other party) provided however that any delay by a sub-contractor or supplier of the party so delaying shall not relieve the party from liability for delay except where such delay is beyond the reasonable control of the sub-contractor or supplier concerned. Subject to the party so delaying promptly notifying the other party in writing of the reasons for the delay (and the likely duration of the delay), the performance of such party's obligations shall be suspended during the period that the said circumstances persist and such party shall be granted an extension of time for performance equal to the period of the delay. Save where such delay is caused by the act or omission of the other party (in which event the rights, remedies and liabilities of the parties shall be those conferred and imposed by the other terms of this Agreement and by law) any costs arising from such delay shall be borne by the party incurring the same.

16 Compliance with relevant law

Both parties will comply with all applicable laws, rules and regulations in respect of all activities conducted under this Agreement.

17 Company's exclusion of liability

The Company shall not be liable to the Client or be deemed to be in breach of its warranties or obligations under any provision in this Agreement:

- 17.1 for any delay in performing or failure to perform the Company's obligations to the extent that such delay or failure was due to a failure by the Client to perform its obligations under this Agreement or if delay results from a failure by the Client to comply with reasonable requests by the Company for instructions information or action required by it to perform its obligations within a reasonable time limit; or
- 17.2 for the consequences of any acts or omissions of the Client, its employees or agents or any Third Party Provider or other third party suppliers or manufacturers engaged by or on behalf of the Client (other than third party sub-contractors or suppliers selected by the Company); or
- 17.3 if the delay in performing or failure to perform the Company's obligations is due to a failure or lack of performance by the Client's IT; or
- 17.4 if the Client is in default of any of its payment obligations under this Agreement.
- 17.5 for the lapse of the client's domain name if that lapse is due to a fault, act or omission of the client, such as (but not exclusively) a failure of the client to maintain payment for the domain name.
- 17.6 for any claims, damages, penalties and expenses arising from any third party allegations that the registered domain name infringes any rights owned by such third parties.
- 17.7 for any breach whatsoever relating to data protection and privacy laws and the Client recognises that the Company only acts as an agent for the Client as certificate authority and has no control or influence over e-mail content processed by the ISP Service or the Client. The Client shall hold the Company harmless from and indemnify the Company against any claims by any party relating thereto.
- 17.8 If the Company reasonably forms the view that the content of any website may be pornographic, defamatory, misleading or deceptive or otherwise in breach of any third party's rights or in contravention of applicable law, the Company may without prior notice or any liability remove that content from the website and shall within twenty-four (24) hours thereafter notify the Client of its removal.
- 17.9 The Client shall indemnify and hold harmless the Company and its affiliates, employees, agents, contractors, directors, officers and third party providers from all liabilities, demands, costs and expenses (including legal expenses) arising in connection with any content including but not limited to the posting and/or transmission of content on the website.

18 Indemnity, limitation of liability and insurance

- 18.1 The Company shall, during the term of this Agreement, maintain employer's liability, third party liability, product liability and professional negligence insurance cover in respect of its liabilities arising out of or connected with this Agreement, such cover to be to a minimum value of £1,000,000 and with an insurance company of repute. The Company shall on request supply copies of the relevant certificates of insurance to the Client as evidence that such policies remain in force. The Company undertakes to use reasonable commercial efforts to pursue claims under such insurance policies.
- 18.2 The Company shall indemnify the Client for personal injury or death caused by the negligence of its employees in connection with the performance of their duties under this Agreement or by the provision of the Services supplied pursuant to this Agreement.
- 18.3 Except in respect of claims for death or personal injury arising from the Company's negligence, as referred to in clauses 18.2 above, in no event will the Company be liable for any damages resulting from loss of data or use, lost profits, loss of anticipated savings, nor for any damages that are an indirect or secondary consequence of any act or omission of the Company whether such damages were reasonably foreseeable or actually foreseen.
- 18.4 Except as provided above in the case of personal injury, death, and damage to tangible property, the Company's maximum liability to the Client under this Agreement or otherwise for any cause whatsoever (whether in the form of the additional cost of remedial services or otherwise) will be for direct costs and damages only and will be limited to a sum equivalent to the price paid per annum to the Company under this Agreement for the Services that are the subject of the Client's claim.
- 18.5 The parties acknowledge and agree that the limitations contained in this clause 18 are reasonable in the light of all the circumstances.
- 18.6 The Client's statutory rights as a consumer (if any) are not affected. All liability that is not expressly assumed in this Agreement is hereby excluded. These limitations will apply regardless of the form of action, whether under statute, in contract or tort including negligence or any other form of action. For the purposes of this clause, 'Company' includes its employees, sub-contractors and suppliers who shall all have the benefit of the limits and exclusions of liability set out above in terms of the Contracts (Rights of Third Parties) Act 1999. Nothing in this Agreement shall exclude or limit liability for fraudulent misrepresentation.

19 Termination for cause

Subject to the Dispute Resolution Procedure, this Agreement may be terminated for cause in the following circumstances:

- 19.1 by either the Client or the Company with immediate effect from service on the other party of written notice if the other party is in breach of any material obligation under this Agreement and, if the breach is capable of remedy, that party has failed to remedy such breach within 30 days of receipt of notice so to do (or within 5 days of receipt of such notice in respect of breach of payment obligations by the Client)
- 19.2 by either party with immediate effect from the date of service on the other of written notice if a resolution is passed or an order is made for the winding up of the other (otherwise than for the purpose of solvent amalgamation or reconstruction) or the other becomes subject to an administration order or a receiver or administrative receiver is appointed over or an encumbrancer takes possession of any of the other's property;
- 19.3 by either party with immediate effect from the date of service on the other of written notice if the other party ceases or threatens to cease to carry on business in the United Kingdom;

20 Consequences of termination

- 20.1 If this Agreement is terminated in whole or in part for any reason the Company shall, subject to payment of its reasonable fees, co-operate fully with the Client to ensure an orderly migration of the Services or replacement services to the Client or, at the Client's request, a new service provider.
- 20.2 Forthwith on termination of this Agreement, the Company shall return to the Client all Client IT together with all other materials, assets and other information provided to the Company, or if requested by the Client, the Company shall destroy the same (in the case of any software erasing it from the magnetic media on which it is stored) and shred optical media certifying in writing to the Client that the same has been destroyed.
- 20.3 The Company may require access to some Client data for a reasonable period after termination as the Client may require the Company to access the data and recover it.
- 20.4 If the Company supplies Microsoft software to the Client then the Client only has the right to use it under licence held by the Company. Any Microsoft software, discs etc must be returned to the Company after termination.
- 20.5 Any termination of this Agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision of this Agreement which is expressly or by implication intended to come into or continue in force on or after termination.

21 Data protection

- 21.1 The Company undertakes to the Client that it will comply

with obligations equivalent to the obligations of a 'data controller' under the provisions of the seventh data protection principle as set out in Schedule 1 of the Data Protection Act 1998.

21.2 In addition, the Company:

21.3 Warrants that it has appropriate technical and organisational measures in place against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data held or processed by it and that it has taken reasonable steps to ensure the reliability of any of its staff who have access to personal data processed in connection with this Agreement;

21.4 undertakes that it will act only on the instructions of the Client in relation to the processing of any personal data in connection with this Agreement; and

21.5 undertakes to allow the Client access to any relevant premises on reasonable notice to inspect its procedures described above.

21.6 The obligations set out in this clause shall remain in force notwithstanding termination of this Agreement.

22 Waiver

No delay, neglect or forbearance on the part of either party in enforcing against the other party any term or condition of this Agreement shall either be or be deemed to be a waiver or in any way prejudice any right of that party under this Agreement. No right, power or remedy in this Agreement conferred upon or reserved for either party is exclusive of any other right, power or remedy available to that party.

23 Cumulation of remedies

Subject to the specific limitations set out in this Agreement, no remedy conferred by any provision of this Agreement is intended to be exclusive of any other remedy except as expressly provided for in this Agreement and each and every remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or existing at law or in equity by statute or otherwise.

24 Severability

If any provision of this Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of this Agreement.

25 Partnership or agency

This Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other

relationship between the parties other than the contractual relationship expressly provided for in this Agreement.

26 Notices

26.1 All notices under this Agreement shall be in writing.

26.2 Notices shall be deemed to have been duly given:

26.2.1 when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or

26.2.2 when sent, if transmitted by fax or e-mail and a successful transmission report or return receipt is generated; or

26.2.3 on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or

26.2.4 on the tenth business day following mailing, if mailed by airmail, postage prepaid in each case addressed to the most recent address, e-mail address, or facsimile number notified to the other party.

27 Dispute resolution procedure and governing law

27.1 This Agreement and all matters arising from it and any dispute resolutions referred to below shall be governed by and construed in accordance with English law notwithstanding the conflict of law provisions and other mandatory legal provisions save that:

27.1.1 either party shall have the right to sue to recover its fees in any jurisdiction in which the other party is operating or has assets; and

27.1.2 either party shall have the right to sue for breach of its Intellectual Property and other proprietary information and trade secrets (whether in connection with this Agreement or otherwise) in any country where it believes that infringement or a breach of this Agreement relating to its Intellectual Property might be taking place. For the avoidance of doubt, the place of performance of this Agreement is agreed by the parties to be England and Wales.

27.2 Each party recognises that the other party's business relies upon the protection of its Intellectual Property and that in the event of a breach or threatened breach of its Intellectual Property, the other party will be caused irreparable damage and such other party may therefore be entitled to injunctive or other equitable relief in order to prevent a breach or threatened breach of its Intellectual Property.

27.3 With respect to all other disputes which are not Intellectual Property related pursuant to clauses 27.1 and 27.2 above and its special rules the following procedures in clauses 27.3 to 27.5 shall apply. Where there is a dispute the aggrieved party shall notify the other party in writing of the nature of the dispute with as much detail as possible about the deficient performance

of the other party. A representative from senior management of each of the parties ('representatives') shall meet in person or communicate by telephone within 5 business days of the date of the written notification in order to reach an agreement about the nature of the deficiency and the corrective action to be taken by the respective parties. The representatives shall produce a report about the nature of the dispute in detail to their respective boards and if no agreement is reached on corrective action, then the chief executives of each party shall meet in person or communicate by telephone, to facilitate an agreement within 5 business days of a written notice by one to the other. If the dispute cannot be resolved at board level within a further 5 business days, or if the agreed upon completion dates in any written plan of corrective action are exceeded, either party may seek its legal remedies as provided below.

- 27.4 If the parties cannot resolve a dispute in accordance with the procedure in clause 27.3 above, then they shall with the assistance of the Centre for Effective Dispute Resolution ('CEDR'), seek to resolve the dispute or difference amicably by using an Alternative Dispute Resolution ('ADR') procedure acceptable to both parties before pursuing any other remedies available to them. If either party fails or refuses to agree to or participate in the ADR procedure or if in any event the dispute or difference is not resolved to the satisfaction of both parties within 90 days after it has arisen, the matter shall be settled in accordance with the procedure below.
- 27.5 If the parties cannot resolve the dispute by the procedure set out above, the parties shall irrevocably submit to the exclusive jurisdiction of the courts of England and Wales for the purposes of hearing and determining any dispute arising out of this Agreement.
- 27.6 While the dispute resolution procedure above is in progress and any party has an obligation to make a payment to another party or to allow a credit in respect of such payment, the sum relating to the matter in dispute shall be paid into an interest bearing deposit account to be held in the names of the relevant parties at a clearing bank and such payment shall be a good discharge of the parties' payment obligations under this Agreement. Following resolution of the dispute, whether by mediation or legal proceedings, the sum held in such account shall be payable as determined in accordance with the mediation or legal proceedings, and the interest accrued shall be allocated between the parties pro rata according to the split of the principal sum as between the parties.

28 Non poaching of staff

The Client covenants with the Company that it shall not either during the term of this Agreement or within a period of 6 months thereafter directly or indirectly entice away or

endeavour to entice away from the Company any person who has during the previous 12 months been employed by the Company to provide Services in connection with this Agreement.

29 Third party rights

Subject to clause 18.7 above, a person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from such Act.

30 Interpretation

In this Agreement unless the context otherwise requires:

- 30.1 words importing any gender include every gender;
- 30.2 words importing the singular number include the plural number and vice versa;
- 30.3 words importing persons include firms, companies and corporations and vice versa;
- 30.4 references to numbered clauses and annexes are references to the relevant clause in or annex to this Agreement;
- 30.5 reference in any annex to this Agreement to numbered paragraphs relate to the numbered paragraphs of that annex;
- 30.6 the headings to the clauses, annexes and paragraphs of this Agreement will not affect the interpretation;
- 30.7 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment;
- 30.8 any obligation on any party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;
- 30.9 any party who agrees to do something will be deemed to fulfil that obligation if that party procures that it is done.

31 Amendments

This Agreement may not be released, discharged, supplemented, interpreted, amended, varied or modified in any manner except by the Company by providing written notice of changes.

32 Entire agreement

This Agreement supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the parties relating to the subject matter of this Agreement. However the obligations of the parties under any pre-existing non-disclosure agreement shall remain in full force and effect in so far as there is no conflict between the same. The parties confirm that they have not entered into this Agreement on the basis of any representation

that is not expressly incorporated into this Agreement.

33 Counterparts

This Agreement may be executed in any number of counterparts or duplicates, each of which shall be an original, and such counterparts or duplicates shall together constitute one and the same agreement.

34 Time of the essence

Time shall be of the essence in this Agreement as regards any time, date or period mentioned in this agreement or subsequently substituted as a time, date or period by agreement in writing between the parties.

35 Set-off

Where either party has incurred any liability to the other party, whether under this Agreement or otherwise, and whether such liability is liquidated or unliquidated, each party may set off the amount of such liability against any sum that would otherwise be due to the other party under this Agreement