EBB3 LIMITED STANDARD TERMS AND CONDITIONS

These terms and conditions apply to any order placed by a Customer for the supply of Supplier Hardware, Supplier Software and/or Services, either as part of a System Implementation, to supplement a System that has already been implemented or independently from a System Implementation.

To place an order, the Customer must submit an Order Form which, if accepted by the Supplier, will form a legally binding Contract for the supply of the applicable Deliverables.

1. **INTERPRETATION**

The definitions and rules of interpretation in this clause apply in these terms and any Order Form.

1.1 **Definitions**

Affiliate: any entity that directly or indirectly controls, is controlled by, or is under common control with another entity.

Confidential Information: information of commercial value, in whatever form or medium, disclosed by one party to the other party, including commercial or technical know-how, technology, information pertaining to business operations and strategies.

Contract: an individual contract formed between the Supplier and the Customer under these terms in accordance with clause 2.

Customer: the customer named in the relevant Order Form.

Customer Hardware: any computers and other equipment to be supplied by the Customer as set out in an Order Form.

Customer Representative: the Customer employee appointed under clause 13.1.2 who has overall responsibility for representing the Customer in relation to the relationship between the Supplier and the Customer.

Customer Software: any software programs to be supplied by the Customer as specified in an Order Form.

Customer Support Plan: the Supplier's plan for supporting the supported Deliverables and the Customer in its use of the supported Deliverables as notified to the Customer from time to time.

Data Protection Law: all applicable data protection law, regulations and guidance in any applicable jurisdiction.

Defect: an error in the Deliverables that causes them to fail to operate substantially in accordance with the relevant Documentation and/or Technical Specification.

Deliverables: means the Supplier Hardware, Supplier Software, Documentation and/or Services to be provided under the relevant Contract.

Delivery Date: the estimated delivery date specified in the Order Form or the System Implementation Plan, on which the Supplier will deliver an item of Supplier Hardware or Software Module to the Site.

Documentation: the operating manuals, user instruction manuals, technical literature and all other related materials in human-readable and/or machine-readable forms supplied by the Supplier as specified in an Order Form.

Good Industry Practice: the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.

Hardware: the Customer Hardware and the Supplier Hardware.

Hardware Installation Tests: the tests set out in the Hardware Installation Test Plan.

Hardware Installation Test Plan: the plan for the installation of the Hardware annexed to the Order Form.

Hardware Supplier: a company from which the Supplier acquires Supplier Hardware for the purposes of resale to the Customer.

Initial Term: in respect of ongoing Licences or Services, the initial term specified in the Order Form, which (unless otherwise agreed in writing) will run from the Licence Commencement Date or Service Commencement Date (as applicable).

Installation Date: the estimated date by which the Supplier will complete installation of a specified item of Hardware or a Software Module as specified in the Order Form or System Implementation Plan.

Licence Commencement Date: unless otherwise stated in the Order Form, the Licence Commencement Date is: (a) where the Supplier is providing System Implementation, the System Acceptance Date, (b) where the Supplier is not providing System Implementation but is installing the Supplier Software, the Installation Date and (c) in any other case, the date on which the Supplier Software is delivered to the Customer.

Licences: any licences to use the Supplier Software.

Licensed Users: the employees and agents of the Customer who use the Supplier Software, up to the maximum number specified in an Order Form.

Maintenance and Support: the services to be provided by the Supplier to maintain and support the use of Deliverables under a Contract.

Manufacturers' Warranties: the warranties given by any third-party manufacturer in relation to any item of the Supplier Hardware.

New Release: a new release of all or any part of the Supported Software suitable for use by the Customer in which previously identified faults have been remedied or to which any modification, enhancement, revision or update has been made, or to which a further function or functions have been added, which is supplied by the licensor of the Supported Software without any separate charge.

New Version: a new version of any of the Supported Software for the supply of which its licensor makes a separate charge.

Order Form: an order form setting out the details of the particular Deliverables required by the Customer and the terms on which the Supplier is prepared to provide them which, when signed by both the Supplier and the Customer forms a Contract in accordance with clause 2.

Permitted Purposes: the meaning given in clause 15.1.

Personal Data: data subject to protection under Data Protection Law in any jurisdiction.

Price: the aggregate price for the Deliverables, as specified in an Order Form.

Service Commencement Date: unless otherwise stated in the Order Form, the Service Commencement Date is: (a) for System Implementation, the date set out in the System Implementation Plan, (b) for other Services which are intended to commence on acceptance of the System, the System Acceptance Date and (c) in any other case, the date of the Order Form.

Service Level Agreement: requirements for Maintenance and Support as set out an Order Form.

Services: the services to be provided by the Supplier under a Contract, such as System Implementation, Maintenance and Support and Training.

Site(s): the location(s) at which the Deliverables are to be supplied and/or installed as specified in an Order Form.

Software Module: any one of the individual software programs in the Supplier Software.

Supplier: ebb3 Limited, a company incorporated and registered in England and Wales with company number 09942744, whose registered office is at Enterprise House, 97 Alderley Road, Wilmslow, SK9 1PT, United Kingdom.

Supplier Hardware: any computers and other equipment to be supplied by the Supplier as set out in an Order Form.

Supplier Representative: the Supplier employee appointed under clause 13.1.1 who has overall responsibility for representing the Supplier in relation to the relationship between the Supplier and the Customer.

Supplier Software: any software programs proprietary to third parties, listed in an Order Form, which are to be provided to the Customer.

Support Charges: any support charge as specified in an Order Form.

Supported Software: any Customer Software and the Supplier Software which the Supplier is to support under a Contract as specified in an Order Form.

System: the system consisting of the Customer Hardware, the Customer Software, the Supplier Hardware, the Supplier Software and the Documentation.

System Acceptance Date: the date on which the System is accepted by the Customer under clause 8.3.5(a).

System Acceptance Tests: the tests of the System after installation to be agreed in accordance with clause 8.3.1.

System Implementation: the implementation of a new or improved System by the Supplier, as further described in clause 8.1.

System Implementation Plan: the time schedule and sequence of events for the performance of the System Implementation annexed to the Order Form, which may be varied in accordance with clause 8.

Technical Specification: any specification of the Deliverables agreed between the Supplier and the Customer as specified in an Order Form.

Term: the Initial Term and any renewal term.

Training: any training to be provided by the Supplier, as specified in an Order Form.

VAT: value added tax chargeable under the Value Added Tax Act 1994 and any similar additional tax or any other similar turnover, sales or purchase tax or duty levied in any other jurisdiction.

1.2 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.3 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.4 Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.5 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.6 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

1.7 Clause headings do not affect interpretation.

1.8 **Writing** or **written** does not include faxes, e-mail or any other form of electronic communication, except where expressly provided to the contrary.

1.9 If in a Contract there is a conflict between these terms and the terms of the Order Form, these terms shall prevail unless the conflicting term in the Order Form is expressly stated as being intended to override these terms. Any overriding terms in an Order Form apply only to the applicable Contract and not any other Contract entered into under these terms.

1.10 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors or permitted assigns.

2. **BASIS OF AGREEMENT**

2.1 Where the Customer makes a request for the Supplier to provide Deliverables, and the Supplier is prepared to provide those requested Deliverables, the Supplier will prepare an Order Form setting out the basis on which it is prepared to provide those Deliverables and will provide the Order Form to the Customer for approval.

2.2 The submission of a signed Order Form will constitute an offer by the Customer to procure the relevant Deliverables from the Supplier, and the counter-signature

of that Order Form by the Supplier will constitute an acceptance of that offer and will form a legally binding Contract between the parties for the supply of the relevant Deliverables, incorporating these terms and the terms of the Order Form.

2.3 Each party warrants that it has full capacity and authority, and all necessary licences, permits and consents, to enter into and perform each Contract, and that those signing the Order Form are duly authorised to bind the party for whom they sign.

3. SUPPLIER HARDWARE

3.1 Supply of Supplier Hardware

Where the Order Form specifies that the Supplier is to supply Supplier Hardware, the Supplier shall deliver (and where applicable install) all items of Supplier Hardware in accordance with clause 5.

3.2 Testing and Acceptance of Supplier Hardware

3.2.1 Where the Supplier is responsible for the installation of the Hardware then:

(a) following installation of each item of Supplier Hardware, the Supplier shall carry out the Hardware Installation Tests applicable to that item and shall supply the Customer with copies of the test results;

(b) if any item of the Supplier Hardware fails to pass the applicable Hardware Installation Tests, the Supplier shall remedy the deficiency as soon as possible and the relevant test(s) shall be repeated within a reasonable time;

(c) if any item of Supplier Hardware fails in some material respect to pass such repeated Hardware Installation Tests then the Customer may, by written notice to the Supplier, choose at its sole discretion to specify (without prejudice to the Customer's other rights and remedies) a new date for carrying out further tests on the item of Supplier Hardware on the same terms and conditions as are set out in this clause 3.2.1;

(d) if the item of Supplier Hardware fails such further tests then the Customer may either request a repeat test under this clause 3.2.1 or, if the Supplier is unable to correct material defects within a period of six months from the start of Hardware Installation Tests under this clause 3.2.1, reject the item of Supplier Hardware as not being in conformity with the relevant Contract, in which case the Customer will be entitled to a refund of any amounts paid in respect of the affected Supplier Hardware.

3.2.2 Where the Supplier is not responsible for the installation of the Hardware, the Customer shall be responsible for testing the Supplier Hardware on receipt and shall notify the Supplier within five days of any Defects, in which case the Supplier shall, at its discretion either repair or replace the Supplier Hardware or refund the Customer to the amounts paid in respect of the affected Supplier Hardware. If no notification of Defect is issued in accordance with this clause 3.2.2, the Supplier Hardware will be treated as accepted.

3.3 Warranties applicable to Supplier Hardware

3.3.1 The Supplier warrants that:

(a) the Supplier Hardware will be new (except where otherwise specified in the relevant Order Form); and

(b) as far as it is able, the Supplier will pass on to the Customer the benefits of any Manufacturers' Warranties.

3.3.2 The Customer acknowledges that the only warranties in relation to the Supplier Hardware or the supply thereof are the Manufacturers' Warranties, and that the pass-through of the warranties in accordance with clause 3.3.1(b) (where possible) represents the fully extent of the Customer's warranties in respect of the Supplier Hardware.

4. SUPPLIER SOFTWARE

4.1 Supply of Supplier Software

Where the Order Form specifies that the Supplier is to supply Supplier Software, the Supplier shall provide the Supplier Software to the Customer under the standard licence terms provided by the relevant third parties, copies of which shall be provided to the Customer, and the Customer agrees to be bound to the relevant third parties by such licence terms.

4.2 Warranties applicable to Supplier Software

4.2.1 The Supplier warrants that:

(a) it has the right to provide the Supplier Software to the Customer; and

(b) as far as it is able, the Supplier will pass on to the Customer the benefits of any warranties from the provider of the Supplier Software.

4.2.2 The Customer acknowledges that the only warranties in relation to the Supplier Software or the supply thereof are those contained in the licence from the third-party supplier(s) of the same, and that the pass-through of the warranties in accordance with clause 4.2.1(b) (where possible) represents the fully extent of the Customer's warranties in respect of the Supplier Software.

4.3 Rights in Supplier Software

The Supplier Software is proprietary to the appropriate third-party rights owner(s) and the Customer acquires no rights in or to the Supplier Software other than those expressly granted by a Contract.

4.4 Customer compliance with Licence terms

4.4.1 The Customer shall comply with the Licences and shall indemnify and hold the Supplier harmless against any loss of damage which it may suffer or incur as a result of the Customer's breach of such terms howsoever arising.

4.4.2 The Supplier may treat the Customer's breach of any Third-Party Licence as a breach of the relevant Contract.

4.4.3 The Customer acknowledges that it is only permitted to give the Licensed Users access to the System. If it wishes to increase the number of Licensed Users it shall follow the procedure set out in Clause 13.

5. DELIVERY AND INSTALLATION

5.1 Subject to clause 5.2, the Supplier shall deliver each item of Supplier Hardware and Supplier Software to the Site(s) on or before the applicable Delivery Date for that item.

5.2 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery that is caused by an event, circumstance or cause within the scope of clause 29 or the Customer's failure to provide the Supplier with adequate delivery instructions.

5.3 The Supplier shall supply to the Customer, within a reasonable time before any Delivery Date, such information and assistance as may be necessary to enable the Customer to prepare the Site(s) for the installation of the relevant item of Supplier Hardware or Supplier Software.

5.4 The Customer shall, at its own expense:

5.4.1 provide all cabling and other equipment needed for the installation of the Supplier Hardware at the Site(s), including any equipment needed to connect and interface Supplier Hardware with Customer Hardware, except as specified in the relevant Order Form; and

5.4.2 prepare the Site(s) in accordance with the information provided by the Supplier in advance of each Delivery Date (provided that the Customer may request reasonable assistance from the Supplier to carry out such preparation).

5.5 Where the Supplier has agreed to install the Supplier Hardware or Supplier Software, the Supplier shall complete installation of each item of Supplier Hardware and each Software Module at the Site(s) by the Installation Date for that item of Supplier Hardware or Software Module.

6. DOCUMENTATION

6.1 All Supplier Hardware and Supplier Software shall be accompanied by copies of any applicable Documentation.

6.2 Documentation may be supplied in electronic form.

6.3 The Documentation is proprietary to the appropriate third-party rights owner(s) and the Customer acquires no rights in or to the Documentation other than those expressly granted by a Contract.

6.4 The Customer may make such further copies of the Documentation as are reasonably necessary, including and for training the Customer's personnel. The Customer shall ensure that all proprietary notices are reproduced in any such copy.

7. SERVICES

7.1 Supply of Services

7.1.1 Where the Order Form specifies that the Supplier is to supply Services, the Supplier shall provide the Services as described in the relevant Order Form.

7.1.2 The provisions of this clause 7 apply to all Services provided under a Contract. Clauses 8 to 10 contain further provisions applying to particular categories of Services.

7.1.3 The provision of employees, subcontractors and agents of the Supplier to carry out the Services shall be at the discretion of the Supplier.

7.2 Warranties applicable to Supplier Software

The Supplier warrants that:

7.2.1 it has the right to provide the Services to the Customer;

7.2.2 it will perform the Services in a timely, reliable and professional manner, in conformity with Good Industry Practice by a sufficient number of competent staff with appropriate skills, qualifications and experience, and has and will at all times have the ability and capacity to meet such requirements; and

7.2.3 it is in compliance with, and will perform the Services in compliance with, all applicable law and regulations.

7.3 Customer cooperation

7.3.1 The Customer shall co-operate with the Supplier in any manner reasonably required by the Supplier in order to provide the Services, including prompt provision of information and data, making available suitably qualified employees and contractors of the Customer and, subject to the Supplier's compliance with the Customer's normal security requirements:

(a) provide access to the Customer's systems for the purpose of providing the Services, provided that such access shall be direct or remote, at the Customer's option, and that, in the latter case, it will be subject to the Supplier's compliance with any additional requirements for security and encryption techniques or software which may from time to time be specified by the Supplier;

(b) provide such further access for the Supplier's staff to the Site(s) as is necessary to carry out the Supplier's obligations under the Contract. The Customer shall obtain for the Supplier all permissions necessary to obtain such access;

(c) when the Supplier's staff are working on the Site(s), provide facilities and supplies reasonably required by the Supplier, such as power and computer consumables.

7.3.2 The Customer shall, at its own expense, provide the equipment necessary at the Site(s) to enable the access referred to in clause 7.3.1(a) in accordance with the requirements set out by the Supplier, but all other costs and expenses for such access shall be borne by the Supplier.

7.3.3 The Customer may restrict access to certain areas of its premises or systems on security grounds.

8. SYSTEM IMPLEMENTATION

8.1 Responsibilities in relation to System Implementation

Where the Services include System Implementation:

8.1.1 the Supplier agrees to:

(a) deliver and install the Supplier Hardware and Supplier Software at the Site(s) (in accordance with clauses 3 and 4);

(b) integrate the Supplier Hardware, Customer Hardware, Supplier Software and Customer Software to form the System (in accordance with clause 8.2); and

(c) carry out, in conjunction with the Customer, the System Acceptance Tests (in accordance with 8.3).

8.1.2 the Customer shall be responsible for ensuring that each item of Customer Hardware and Customer Software is installed and is in working order and available to the Supplier no later than the relevant date specified in the System Implementation Plan.

8.2 **Implementation**

8.2.1 Both parties shall perform their obligations under the Contract in accordance with the System Implementation Plan.

8.2.2 Subject to clause 8.2.3, the Supplier shall complete the System Implementation in each stage of the System Implementation Plan by the date specified in the System Implementation Plan.

8.2.3 The Supplier shall be given an extension of time for completion of any one or more of the stages in the System Implementation Plan if one of more of the following events occurs:

(a) delay is caused in whole or in part by a request, action or omission of the Customer or its employees, agents or third party contractors;

(b) a variation to the System is made at the Customer's request under the change control procedures set out in clause 13; or

(c) a force majeure event occurs as described in clause 29.

8.2.4 If the Supplier is entitled to an extension of time under clause 8.2.3:

(a) it shall give written notice to the Customer not later than seven days after the beginning of the event;

(b) the notice shall specify the event relied on and, in the case of a force majeure event under clause 29, shall estimate the probable extent of the delay;

(c) the Customer Representative and the Supplier Representative shall use best endeavours to agree in writing, signed by both parties, what extension of time is reasonable in the circumstances provided that the Supplier's estimate shall prevail in the absence of agreement;

(d) the System Implementation Plan shall be deemed amended accordingly; and

(e) in the case of a delay falling within 8.2.3(a) where the Supplier can demonstrate by documentary evidence that the delay has resulted in an increase in cost to the Supplier of carrying out its obligations under the Contract, the Supplier may, at its sole discretion, notify the Customer that it wishes to increase the Price by an amount not exceeding any such demonstrable cost and the Supplier may invoice the Customer for any additional monies that become payable in this way.

8.3 **Testing and Acceptance of System following System Implementation**

8.3.1 No later than 30 days from the date of signature of the relevant Order Form, the Customer shall deliver to the Supplier proposed user acceptance criteria and test data for the System Acceptance Tests. These criteria and data shall be such as are reasonably required to show that the System complies with the Technical Specification. The Supplier shall provide the Customer with reasonable assistance to prepare such user acceptance criteria and test data at the Customer's request. The parties shall use best endeavours to agree the System Acceptance Tests within ten days from the date of delivery to the Supplier of the proposed criteria and data.

8.3.2 Within ten days of the installation and integration of each part of the System, the System Acceptance Tests shall be carried out. The System Acceptance Tests shall be started as soon as reasonably possible after installation and shall be run continuously during Normal Working Hours. The Supplier shall carry out the agreed System Acceptance Tests unless the Customer notifies the Supplier, not later than five days after the installation of the last part of the System to be installed, that it will carry out the System Acceptance Tests. The party carrying out the System Acceptance Tests shall give the other party at least two days' notice of the start of the System Acceptance Tests and permit the other party to observe all or any part of the testing.

8.3.3 If the System fails to pass the System Acceptance Tests, the Customer shall, within two days from the completion of the System Acceptance Tests, or any part of these tests, provide a written notice to this effect, giving details of such failure(s). The Supplier shall remedy the defects and deficiencies and the relevant test(s) shall be repeated within a reasonable time.

8.3.4 If the System fails in some material respect to pass any repeated System Acceptance Tests within four weeks from the date of its second submission to the System Acceptance Tests, then the Customer may, by written notice to the Supplier, choose at its sole discretion:

(a) to fix (without prejudice to the Customer's other rights and remedies) a new date for carrying out further tests on the System on the same terms and conditions. If the System fails such further tests then the Customer may request a repeat test under this clause 8.3; or

(b) if the Supplier is unable to correct material defects within a period of six months from the commencement of System Acceptance Tests under this clause 8.3, to reject the System as not being in conformity with the Contract, in which event the Customer may terminate the relevant Contract.

8.3.5 Acceptance of the System shall be deemed to have occurred on whichever is the earliest of:

(a) the signing by the Customer of a System acceptance certificate for the System;

(b) the expiry of five days after the completion of all the System Acceptance Tests, unless the Customer has given any written notice under clause 8.3.3;

(c) the expiry of ten days after the installation of the final part of the System to be installed if the System Acceptance Tests for that module have not started, or have not been pursued with due diligence, unless such failure results from the Supplier's failure to co-operate in the performance of the System Acceptance Tests; or

(d) the use of the System by the Customer in the normal course of its business.

8.4 **Warranty applicable to System Implementation**

The Supplier warrants that the System will perform in accordance with the Technical Specification and the Documentation:

8.4.1 at the System Acceptance Date; and

8.4.2 where ongoing Maintenance and Support is to be provided in relation to the System under the Contract, during the Term.

9. **TRAINING**

9.1 Where the Services include Training, the Supplier shall provide that Training to the Customer.

9.2 Any additional Training required by the Customer shall be provided by the Supplier at the Supplier's standard rates then in force.

9.3 Training shall be carried out at location(s) specified in the relevant Order Form or as may otherwise be agreed by the parties.

10. **MAINTENANCE AND SUPPORT**

10.1 Where the Services include Maintenance and Support, the Supplier shall ensure that support is available in accordance with the Customer Support Plan to provide assistance to the Customer in respect of the following:

10.1.1 using reasonable endeavours to correct Defects notified to it by the Customer in a timely manner appropriate to the seriousness of the circumstances in accordance with the procedure and timescales set out in the Service Level Agreement; and

10.1.2 providing advice on the use of the Deliverables covered by the Maintenance and Support.

10.2 In respect of any Supported Software, the Supplier agrees to:

10.2.1 notify the Customer promptly in writing of the issue of any New Releases and, if requested to do so, supply the Customer with New Releases in machine-readable form together with related amendments to the Documentation by making such New Releases available for downloading over the internet; and

10.2.2 notify the Customer promptly in writing of the issue of any New Version, specifying the following:

(a) the charge for delivery and installation of the New Version;

(b) the licence fee payable for the New Version;

(c) in what way the New Version differs from the previous version in terms of functionality, performance and compatibility,

but for the avoidance of doubt, nothing in a Contract shall oblige the Customer to take any New Version.

10.3 The Supplier warrants that the supported Deliverables will be available for use by the Customer during any calendar month except:

(a) when the Supplier is carrying out pre-notified or emergency maintenance as set out in the Service Level Agreement; and

(b) where the Deliverables cannot be accessed due to issues with anything other than the Deliverables, including in particular problems with connectivity.

If the Deliverables are not so available the Supplier shall (as the Customer's sole remedy in respect of breach of this warranty) grant to the Customer a credit against future invoices as set out the Service Level Agreement.

10.4 The Customer shall not, without the Supplier's prior written approval, allow any person other than a representative of the Supplier to modify, repair or maintain any part of the supported Deliverables.

10.5 The Customer shall, no later than the Service Commencement Date for the Maintenance and Support, appoint and maintain for the duration of the Contract an individual to serve as primary contact with the Supplier for the purpose of the provision of services under the Contract, and a deputy to that individual, and shall notify the Supplier of the names of those individuals promptly on their appointment.

10.6 If the Supplier visits the Site(s) at the Customer's request to investigate a failure of a Deliverable, which proves in the Supplier's reasonable opinion not to have been caused by a Defect or the actions or omissions of the Supplier's staff, the Supplier may charge the Customer for the time spent on such visit on a time-and-materials basis at its standard rates then in force.

10.7 The Supplier shall take all reasonable steps to maintain continuity in relation to the team involved in the provision of the Services.

11. **PRICE AND PAYMENT**

11.1 The Supplier shall submit invoices in accordance with the Order Form. The Customer shall make payment of each invoice by the due date stated in that invoice or within 30 days of receipt of the invoice, whichever is later.

11.2 The Price and all other payments stated in the Order Form are net of tax. The Customer shall, in addition, pay to the Supplier the amount of any tax, duty or assessment, including any applicable VAT, which the Supplier is obliged to pay and/or collect from the Customer in respect of any supply under a Contract (other than tax on the Supplier's income).

11.3 If the Customer fails to make any payment due to the Supplier under a Contract by the due date for payment, then, without limiting the Supplier's remedies under Clause 20.3.1, the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Barclays Bank PLC's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

11.4 The Supplier may increase the price of any Supplier Hardware to reflect any price increase applied by the relevant Hardware Supplier after the Contract was concluded. The Supplier will promptly notify the Customer of any such increase. Where the Supplier has already issued an invoice for the relevant Supplier Hardware, it may issue a further invoice for the difference between the amount invoiced and the revised price.

11.5 In respect of ongoing Licences or Services, the Supplier may increase the Price following the end of the Initial Term by giving the Customer at least three months' notice before such anniversary. Any such increase shall not exceed the percentage increase in the cost to the Supplier of any element of the Licence or Service which is being supplied by a third party and by the Retail Prices Index for other elements of the Licence or Service in each case since the Licence Commencement Date or Service Commencement Date (as applicable) or any subsequent increase if applicable.

11.6 All invoices issued by the Supplier under or in connection with a Contract shall be accompanied by a sufficiently detailed breakdown of the matters being invoiced.

11.7 Reasonable out-of-pocket expenses may be charged by the Supplier on production of reasonable evidence of expenditure to the Customer.

12. **CHANGE CONTROL**

12.1 The Customer may, by giving written notice to the Supplier at any time during the Term, request a change to the System or the Deliverables.

12.2 Within seven working days of receipt of such notice, the Supplier shall, at its standard rates then in force, prepare for the Customer a written quote for any increase or decrease in the Price and, where applicable, of any effect that the requested change would have on the System Implementation Plan.

12.3 Within 14 working days of receipt of the written quote referred to in clause 12.2, the Customer shall inform the Supplier in writing of whether or not the Customer wishes the requested change to be made. If the change is required, the Supplier shall not make the requested change until the parties have agreed and signed a written agreement specifying, in particular, any changes to the System Implementation Plan and Price.

13. **REPRESENTATIVES**

13.1 No later than five days after the date of the first Contract entered into by the Customer:

13.1.1 the Supplier shall notify the Customer of the name and qualifications of the person appointed as the Supplier Representative; and

13.1.2 the Customer shall notify the Supplier of the name and qualifications of the person appointed as the Customer Representative.

13.2 The Supplier Representative shall have the responsibility and commensurate authority for the overall progress of any Contracts entered into between the parties and any Deliverables to be provided and shall be the person to whom all questions regarding the Contracts and Deliverables can be referred.

13.3 The Customer Representative shall co-operate with the Supplier Representative and shall attend meetings scheduled by the Supplier Representative at reasonable intervals (and at least once a week during a System Implementation if so required by the Supplier Representative) to advise and assist the Supplier on all matters relating to the performance of the Contracts.

13.4 Neither the Supplier Representative or Customer Representative shall be replaced unless:

13.4.1 the individual to be replaced is prevented by ill-health from carrying out his duties in connection with the Contract for a significant period;

13.4.2 the individual resigns from employment;

13.4.3 the contract of employment of the individual is terminated; or

13.4.4 the other party makes a reasonable, written request to replace the individual because he has performed unsatisfactorily or has caused a breach of any obligations under the Contract howsoever arising.

13.5 Where clause 13.4 permits replacement of a nominated individual:

13.5.1 if the individual being replaced is the Supplier Representative, the Supplier shall consult with the Customer Representative about the identity of a suitable replacement; and

13.5.2 if the individual being replaced is the Customer Representative, the Customer shall consult with the Supplier Representative about the identity of a suitable replacement.

14. **SUPPLIER PERSONNEL**

14.1 The Supplier undertakes that its employees and contractors, while on the Site(s) or any other premises of the Customer, will comply with all relevant rules and regulations laid down by the Customer from time to time for the behaviour of its own employees and contractors, as notified to the Supplier in writing to the Supplier from to time. The Supplier shall remove any employee or contractor whom the Customer can demonstrate has failed to comply with such rules, regulations and requirements.

14.2 The Supplier alone shall be responsible for the supervision, direction, control, wages, taxes, national insurance and benefits of its staff. The Supplier assumes full responsibility for their acts and omissions and acknowledges that they are not employees or agents of the Customer.

14.3 During the Term and for a period of six months after its expiry or termination neither party shall, without the prior written consent of the other, solicit the employment of or employ, or permit any Affiliate to solicit the employment of or employ any person who is employed by the other party in the course of:

14.3.1 using, developing, supplying, maintaining or supporting a System which is the subject of System Implementation (or any part of it); or

14.3.2 using, developing, supplying, maintaining or supporting any Deliverables.

15. **CONFIDENTIALITY**

15.1 Each party undertakes not to use the other party's Confidential Information otherwise than in the exercise and performance of its rights and obligations under a Contract (**Permitted Purposes**).

15.2 In relation to the Customer's Confidential Information:

15.2.1 the Supplier shall treat as confidential all Confidential Information of the Customer supplied under a Contract. The Supplier shall not divulge any such Confidential Information to any person except to its own employees, and then only to those employees who need to know it for the Permitted Purposes. The Supplier shall ensure that its employees are aware of, and comply with, this clause 15; and

15.2.2 the Supplier may provide any subcontractor authorised under clause 19 with such of the Customer's Confidential Information as it needs to know for the Permitted Purposes, provided that such sub-contractor has first entered into a written obligation of confidentiality owed to the Supplier in terms similar to clause 15.2.1 (which the Supplier shall ensure is adhered to).

15.3 In relation to the Supplier's Confidential Information:

15.3.1 the Customer shall treat as confidential all Confidential Information of the Supplier contained or embodied in the Deliverables, or otherwise supplied to the Customer during the Term of a Contract;

15.3.2 the Customer shall not, without the prior written consent of the Supplier, divulge any part of the Supplier's Confidential Information to any person other than:

(a) the Customer's Representative; and

(b) other employees of the Customer who need to know it for the Permitted Purposes; and

15.3.3 the Customer undertakes to ensure that the persons mentioned in clause 15.3.2 are made aware, before the disclosure of any part of the Supplier's Confidential Information, that the same is confidential and that they owe a duty of confidence to the Customer in terms similar to clause 15.3.1 (which the Customer shall ensure is adhered to).

15.4 The restrictions imposed by clause 15.1, clause 15.2 and clause 15.3 shall not apply to the disclosure of any Confidential Information which:

15.4.1 is now in, or hereafter comes into, the public domain otherwise than as a result of a breach of this clause 15;

15.4.2 before any negotiations or discussions leading to a Contract was already known by the receiving party (or, in the case of the Customer, any of its Affiliates) and was obtained or acquired in circumstances under which the receiving party was (or, in the case of the Customer, the Customer and its Affiliates were) not bound by any form of confidentiality obligation; or

15.4.3 is required by law or regulation to be disclosed to any person who is authorised by law or regulation to receive the same (after consultation, if practicable, with the disclosing party to limit disclosure to such authorised person to the extent necessary).

15.5 Each party shall notify the other party if any of its staff connected with the provision or receipt of the Services becomes aware of any unauthorised disclosure of any Confidential Information and shall offer reasonable assistance to the other party, at that other party's reasonable cost, in connection with any enforcement proceedings which that other party may elect to bring against any person.

15.6 This clause 15 shall remain in full force and effect in the event of any termination of a Contract or any part of a Contract.

16. **DATA PROTECTION**

16.1 Each party agrees that, in the performance of its respective obligations under a Contract, it will comply with the provisions of the Data Protection Law, in each case to the extent it applies to each of them. Where used in this clause 16, the expressions **data subject**, **personal data**, **personal data breach** and **process** bear their respective meanings given in Data Protection Law.

16.2 The Supplier may process personal data on the Customer's behalf for the purposes of performing the Services and otherwise fulfilling its obligations under a Contract. The types of personal data that the Supplier is expected to process on the Customer's behalf will depend on the nature of the Deliverables to be provided and the nature of the Customer's business and System, but is likely to primarily consist of names and contact details of the Customer's employees.

16.3 Where the Supplier processes personal data on the Customer's behalf under or in connection with a Contract, it will do so only in accordance with the terms of the Contract and the Customer's documented instructions (unless otherwise required by law in which case the Supplier will, where permitted, inform the Customer of that legal requirement before processing).

16.4 The Customer warrants that:

16.4.1 it will only provide (or ensure the provision of) personal data to the Supplier where that personal data has been lawfully obtained and where the Customer is lawfully entitled to provide (or ensure the provision of) that personal data to the Supplier for the intended purpose and means of processing; and

16.4.2 any instructions given to the Supplier in accordance with clause 16.3 will be compliant with applicable Data Protection Law, be within the scope of the Supplier's obligations under the Contract and will not (if properly performed) place either the Supplier or the Customer in breach of their respective obligations under Data Protection Law,

and the Customer will indemnify, keep indemnified and hold the Supplier harmless against all claims, demands, penalties, fines, actions, costs, expenses, losses and damages suffered or incurred by or awarded against the Supplier arising from or in connection with any breach by the Customer of this clause 16.4.

16.5 Where the Supplier processes any personal data on the Customer's behalf under or in connection with a Contract it will:

16.5.1 other than as permitted by Data Protection Law, not transfer or allow the transfer of that personal data outside the United Kingdom without the Customer's written consent;

16.5.2 ensure that any persons authorised to process the personal data are subject to a duty of confidence in respect of that processing;

16.5.3 implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk, in compliance with the obligations imposed on the Supplier by Data Protection Law;

16.5.4 notify the Customer without undue delay on becoming aware of a personal data breach and cooperate with the Customer to resolve that issue; and

16.5.5 at the Customer's expense, provide the assistance that the Customer may reasonably require to assist it to comply with its obligations to keep that personal data secure, allow it to inform a regulatory authority or data subject of a personal data breach, conduct a data protection impact assessment, consult with the Information Commissioner regarding the relevant processing activities and/or respond to requests made by data subjects pursuant to Data Protection Law.

16.6 The Customer authorises the Supplier to engage sub-processors from time to time provided that the Supplier will notify the Customer of any intended changes concerning the addition or replacement of sub-processors and will impose upon any sub-processor (and ensure any sub-processor's compliance with) the terms of this clause 16 as if the processing being carried out by the sub-processor was being carried out by the Supplier (and the Supplier will be liable for the acts and omissions of its sub-processors as if they were the Supplier's own acts and omissions).

16.7 From time to time during the term of a Contract the Supplier will (upon written request from the Customer):

16.7.1 provide details in writing of its data processing activities carried out on the Customer's behalf; and

16.7.2 on reasonable notice allow the Customer (or its appointed auditor) to audit its compliance with these terms, subject to any reasonable requirements or restrictions that the Supplier may impose to safeguard the personal data it holds on behalf of other clients and/or avoid unreasonable disruption to the Supplier's business.

16.8 The Supplier will process personal data on the Customer's behalf only during the term of the relevant Contract (and following termination to the extent required to perform any post termination obligations or any other Contract). On the termination or expiry of any part of the Services or a Contract as a whole, the Supplier will either delete or return all personal data processed on the Customer's behalf in connection with the applicable Services and delete any copies (except to the extent retention is required by law or for record-keeping purposes).

16.9 For the avoidance of doubt, nothing in this clause 16 or otherwise in a Contract relieves either party of its own direct responsibilities and liabilities under Data Protection Law.

17. DEFECTS AND REMEDIATION

17.1 Except as provided in clause 17.3, the sole remedy for breach of the warranties under clauses 3.3, 4.2, 7.2 and 8.4 shall be:

17.1.1 in the case of Deliverables covered by Maintenance and Support, correction of the Defects in accordance with clause 10.1.1; and

17.1.2 in any other case, correction of Defects by the Supplier within a period of 21 days (or other reasonable time agreed between the Parties, such agreement not to be unreasonable withheld) from notification by the Customer of the Defect that constitutes such breach.

17.2 In the event that the Supplier cannot remedy the Defects within the period set out in clause 17.1, then, absent any agreement between the Parties regarding an extension of such period:

17.2.1 in the case of Deliverables covered by Maintenance and Support, the Customer's sole and exclusive remedy (if any) shall be as set out in the Service Level Agreement; and

17.2.2 in any other case, if the Defect is material the Customer may treat the failure to remedy it as a material breach of the terms of the relevant Contract for the purposes of clause 20.3.2.

17.3 Defects in Supplier Hardware or System Implementation identified before acceptance shall be dealt with in accordance with the acceptance procedure set out in clause 3.2 or clause 8.3 (as applicable).

17.4 The Supplier does not warrant or guarantee that:

17.4.1 it will be able to rectify all Defects; or

17.4.2 in the case of Supported Software, that any Defect which does not materially affect the Customer's operations using the Supported Software will be corrected before the issue of the next New Release.

17.5 The warranties set out in these terms (and any Order Form) are in lieu of all other express or implied warranties or conditions, including implied warranties or conditions of satisfactory quality and fitness for a particular purpose, in relation to the Contract. The Supplier specifically denies any implied or express representation that:

17.5.1 the System will be fit to operate in conjunction with any hardware items or software products other than with those hardware items and software products that are identified in the Documentation as being compatible with the System; or

17.5.2 the System or any Deliverables will operate uninterrupted or error-free.

17.6 Any unauthorised modifications, use or improper installation of the System or Deliverables by or on behalf of the Customer shall render all the Supplier's warranties and obligations under the Contract null and void.

17.7 The Supplier shall not be obliged to rectify any particular Defect if attempts to rectify such Defect (other than normal recovery or diagnostic procedures) have been made by the Customer's personnel or third parties without the permission of the Supplier.

18. LIMITATION OF LIABILITY

18.1 Neither party excludes or limits liability to the other party for:

18.1.1 fraud or fraudulent misrepresentation;

18.1.2 death or personal injury caused by negligence;

18.1.3 a breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

18.1.4 any matter for which it would be unlawful for the parties to exclude liability.

18.2 The Customer acknowledges that any System implemented by the Supplier is a tool to enable accelerated compute of data and neither the System nor any Deliverables provided by the Supplier are to be solely relied upon in any critical situation.

18.3 Subject to clause 18.1, the Supplier shall not in any circumstances be liable whether in contract, tort (including for negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for:

18.3.1 any loss (whether direct or indirect) of profits, business, business opportunities, revenue, turnover, reputation or goodwill;

18.3.2 any loss or corruption (whether direct or indirect) of data or information;

18.3.3 loss (whether direct or indirect) of anticipated savings or wasted expenditure (including management time); or

18.3.4 any loss or liability (whether direct or indirect) under or in relation to any other contract.

18.4 Clause 18.3 shall not prevent claims for:

18.4.1 direct financial loss that are not excluded under any of the categories set out in clause 18.3.1 to clause 18.3.4; or

18.4.2 tangible property or physical damage.

18.5 Subject to clause 18.1, the Supplier's liability in contract, tort (including negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of a Contract:

18.5.1 in aggregate, shall not exceed the total amount paid or payable under that Contract;

18.5.2 in relation to any and all claims relating to a System Implementation, shall not exceed the total Price paid or payable for that System Implementation;

18.5.3 in relation to any claim (or series of related claims) relating to an ongoing Licence or Service, shall not exceed the total Price paid or payable for the affected Licence or Service during the 12 month period immediately before the date on which the first cause of action giving rise to such claim (or series of related claims) first arose; and

18.5.4 in relation to any and all claims relating to any Deliverable provided (or to be provided) other than as part of a System Implementation and which is not an ongoing Licence or Service, shall not exceed the total Price paid or payable for that Deliverable.

19. ASSIGNMENT AND SUBCONTRACTING

19.1 Subject to clause 19.3, each Contract is personal to the parties and neither party shall assign, transfer, mortgage, charge, subcontract, declare a trust of or deal in any other manner with any or all of its rights and obligations under a Contract without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed).

19.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

19.3 The Supplier may assign any or all of its rights and/or subcontract any or all of its obligations under a Contract.

20. TERM AND TERMINATION

20.1 A Contract shall come into effect immediately on signature, with each Licence to commence on the relevant Licence Commencement Date and each Service to commence on the relevant Service Commencement Date.

20.2 Where a Contract provides for ongoing Licences and/or Services, those Licences and/or Services shall continue, unless terminated earlier in accordance with this clause 20, for the Initial Term and shall automatically renew for consecutive periods of 12 months thereafter unless either party gives at least 3 months' prior notice in writing.

20.3 Either party may terminate a Contract with immediate effect if the other party:

20.3.1 fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;

20.3.2 commits a material breach of any term of the Contract (other than failure to pay any amounts due under the Contract) and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;

20.3.3 repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract; or

20.3.4 makes an arrangement with or enters into a compromise with its creditors, becomes the subject of a voluntary arrangement, receivership, administration, liquidation or winding up, applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986, is unable to pay its debts or otherwise becomes insolvent or suffers or is the subject of any distraint, execution, event of insolvency or event of bankruptcy or any other similar process or event, whether in the United Kingdom or elsewhere.

20.4 The Supplier may cancel an order for Supplier Hardware where and to the extent that the applicable Hardware Supplier has indicated that it is no longer willing or able to supply the applicable Supplier Hardware. Where such cancellation means that it is no longer commercially practicable to fulfil one or more other

parts of the Contract, the Supplier may also cancel the affected parts. Otherwise, the remainder of the Contract shall be unaffected.

20.5 Either party may also terminate a Contract in accordance with clause 29.

20.6 Other than as set out in these terms or the relevant Order Form, neither party shall have any further obligation to the other under a Contract after its termination.

20.7 Any provision of these terms or a Contract which expressly or by implication is intended to come into or continue in force on or after termination of the Contract, including clauses 1, 15, 16, 18, 19, 20.7 to 20.10 and 21 to 33, shall remain in full force and effect.

20.8 Termination or expiry of a Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of a Contract which existed at or before the date of termination or expiry.

20.9 On termination of a Contract for any reason:

20.9.1 each party shall as soon as reasonably practicable return, destroy or permanently erase (as directed in writing by the other party) any documents, handbooks, CD-ROMs or DVDs or other information or data provided to it by the other party containing, reflecting, incorporating or based on Confidential Information belonging to the other party, unless required for another Contract. If required by the other party, it shall provide written evidence (in the form of a letter signed by its Director of Operations) no later than 7 days after termination of the Contract that these have been destroyed and that it has not retained any copies of them (except for one copy that it may use for audit purposes only and subject to the confidentiality obligations in clause 15);

20.9.2 each party shall as soon as reasonably practicable return all of the other party's equipment and materials, failing which, the other party may enter the relevant premises and take possession of them, provided, regarding the Customer's rights under this clause 20.9.2, that the Customer has (if appropriate) paid the Supplier in full for such equipment and materials. Until these are returned or repossessed, the party in possession shall be solely responsible for their safe keeping;

20.9.3 the Supplier shall promptly refund such portion of the Price (as the case may be) as relates to the period after expiry or termination on a pro rata basis;

20.9.4 as soon as reasonably practicable, the Supplier shall vacate the Customer's premises leaving them clean and tidy and removing any goods, materials or equipment belonging to it;

20.9.5 the Customer shall immediately pay any outstanding unpaid invoices and interest due to the Supplier; and

20.9.6 the Supplier shall submit invoices for any Services that it has supplied, but for which no invoice has been submitted, and the Customer shall pay these invoices immediately on receipt.

20.10 Notwithstanding its obligations in clause 20.9, if a party is required by any law, regulation, or government or regulatory body to retain any documents or materials containing the other party's Confidential Information, it shall notify the other party in writing of such retention, giving details of the documents and/or materials that it must retain.

21. **WAIVER**

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

22. **RIGHTS AND REMEDIES**

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

23. **ENTIRE AGREEMENT**

23.1 A Contract (consisting of the Order Form and these terms) constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

23.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these terms or the relevant Order Form. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in these terms or an Order Form.

24. **VARIATION**

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

25. **SEVERANCE**

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

25.2 If any provision or part-provision of a Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

26. **COUNTERPARTS**

Each Order Form may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

27. **THIRD-PARTY RIGHTS**

27.1 Except as expressly provided a Contract, a person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of that Contract, but this does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

27.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement a Contract is not subject to the consent of any person that is not a party to that Contract.

28. **NO PARTNERSHIP OR AGENCY**

28.1 Nothing in a Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

28.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

29. **FORCE MAJEURE**

Neither party shall be in breach of a Contract nor liable for delay in performing, or failure to perform, any of its obligations under that Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 3 months, the party not affected may terminate the affected Contract by giving 28 days' written notice to the affected party.

30. **NOTICES**

30.1 Any notice required to be given under a Contract, shall be in writing and shall be delivered personally, or sent by pre-paid recorded delivery post or by commercial courier, to each party required to receive the notice at the address set out in the relevant Order Form or as otherwise specified by the relevant party by notice in writing to each other party.

30.2 Any notice shall be deemed to have been duly received:

30.2.1 if delivered personally, when left at the address and for the contact referred to in this clause;

30.2.2 if sent by recorded delivery post, when actually delivered or returned through the postal service marked "gone away" or to like effect; or

30.2.3 if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

30.3 A notice required to be given under a Contract shall not be validly given if sent by e-mail.

30.4 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

31. **DISPUTE RESOLUTION**

31.1 Any dispute which may arise between the parties concerning a Contract shall be determined as provided in this clause 31.

31.2 For the purpose of this clause 31, a dispute shall be deemed to have arisen when one party serves on the other a notice in writing stating the nature of the dispute.

31.3 Unless the relevant Contract has already been terminated by the date of the notice of dispute, the Supplier shall, in every case, continue with the performance of the Contract with all due diligence regardless of the nature of the dispute and the Customer shall continue to make payments in accordance with the Order Form.

31.4 After service of the notice of dispute, the following procedure shall be followed by the parties (all periods specified in this clause 31.4 shall be extendable by mutual agreement):

31.4.1 within two days, the Supplier Representative and the Customer Representative shall meet to attempt to settle the dispute;

31.4.2 if those representatives are unable to reach a settlement within seven days from the date of service of the notice, the managing directors of each of the parties shall meet within the following seven days to attempt to settle the dispute; and

31.4.3 if no settlement results from the meeting specified in clause 31.4.2 for the following 28 days the parties shall attempt to settle the dispute by mediation by an independent mediator, with costs to be shared equally between the parties.

31.5 If no settlement is reached under clause 31.4 the dispute shall be determined by the English High Court and the parties submit to the exclusive jurisdiction of such court for such purposes provided that the provisions of this clause shall not preclude either party from seeking interim injunctive relief without going through the procedures set out in this clause.

32. **GOVERNING LAW**

Each Contract and any dispute or claim arising out of or in connection with a Contract or the subject matter or formation of the same (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

33. **JURISDICTION**

The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with a Contract or the subject matter or formation of the same (including non-contractual disputes or claims).