

Micros Terms and Conditions

1.

DEFINITIONS

1.1

In these terms and conditions of sale unless the context otherwise requires the following expressions have the following meanings:

1.1.1

"the Actual Date of Delivery" means the actual date upon which the Equipment or any part or parts thereof are delivered to the Delivery Address

1.1.2

"competent and trained employees" means any person who has undergone training pursuant to the Contract. 1.1.3

"the Contract" means the terms and conditions recorded in this document

1.1.4

"the Equipment" means the computer equipment specified in Schedule A and such changes and additions thereto as shall from time to time be agreed by the parties (whether pursuant to the Contract or otherwise)

1.1.5

"the Equipment Price" means that part of the Total Price which is to be paid by the Customer to the Supplier for the Equipment

1.1.6

"the Information" means (a) any confidential information or information of a confidential nature concerning the products customers business accounts finances or contractual arrangements or other dealings transactions or affairs of the Supplier which may come to the knowledge of the Customer either during or prior to the execution of the Contract and (b) any of the terms of the Contract and (c) such ideas expressions or information as is contained or embodied in the Licensed Program Materials (including without prejudice to the generality of the foregoing the intellectual property rights in the same)

1.1.7

"Micros Travel Representative" means field service engineers and employees of the Supplier and any sub-contractors agents or representatives of the Supplier whom the Supplier may have requested to provide the Maintenance and Support Cover

1.1.8

"the Micros Travel Ltd System" means the Operating Systems (if any) and the Programs

1.1.9

"the Installation Date" means the date upon which operational use (as opposed to demonstration training or testing use) of the System commences

1.1.10

"intellectual property rights" means patents trade marks service marks registered designs applications for any of the foregoing copyright design rights know-how confidential information trade and business names and any other similar protected rights in any country

1.1.11

"the Licence" means the licence to be granted by the Supplier to the Customer pursuant to clause 8.2

1.1.12

"the Licensed Program Materials" means the Programs and (if any) the Operating Documents

1.1.13

"the Location" means the address set out on the front page of the Contract at which the Redsky IT System is to be installed on the Equipment

1.1.14

"the Maintenance and Support Cover" means (where the Location is outside the Territory) System Support at the level of support stated on the front page of the Contract pursuant to clause 13 or (where the Location is inside the Territory) (a) (at the sole discretion of the Supplier) routine preventative maintenance to the Equipment (pursuant to clause 12) and (b) (at the level of cover stated on the front page of the Contract) both (i) remedial maintenance to the Equipment pursuant to clause 12 and (ii) System Support pursuant to clause 13

1.1.15

"the Maintenance and Support Fee" means the amount referred to on the front page of the Contract and to be paid by the Customer to the Supplier for the Maintenance and Support Cover

1.1.16

"the Operating Documents" means such operating documents as may be supplied by the Supplier to the Customer in conjunction with the Equipment and the Redsky IT System (as updated corrected or modified from time to time) and which expression shall include any and all copies of the operating documents which may be supplied by the Supplier to the Customer

1.1.17

"the Operating Systems" means such operating systems (if any) which the Supplier is authorised to supply with the Programs

1.1.18

"parties" means the Supplier and the Customer

1.1.19

"the Planned Date of Delivery" means the date stated on the front page of the Contract and upon which the Supplier plans to complete the delivery of the Equipment to the Delivery Address and the System to the Location

1.1.20

"the Programs" means the computer programs specified in Schedule B and any and all modifications improvements enhancements and replacements thereof and additions thereto which may be supplied by the Supplier to the Customer from time to time (except the Operating Systems) and (where relevant and if appropriate) any and all adjustments alterations changes adaptations and modifications thereof and additions thereto which are not permitted by or pursuant to the Contract

1.1.21

"the Programs Price" means that part of the Total Price which is to be paid by the Customer to the Supplier in connection with the Programs

1.1.22

"the Proprietors" means the beneficial owners of the Operating Systems and other relevant software

1.1.23

"the Services" means the totality of the services and rights to be provided and granted by the Supplier under the Contract

1.1.24

"the System" means the Micros System being used with the Equipment

1.1.25

"the Territory" means the United Kingdom of Great Britain and Northern Ireland and Eire

1.1.26

"the Total Price" means the price to be paid by the Customer to the Supplier for the Services

2.

SERVICES TO BE PROVIDED AND RIGHTS TO BE GRANTED

2.1

The Supplier agrees (subject as referred to or contemplated by the front page of the Contract) upon the terms and conditions hereinafter contained (but subject to the Customer entering into a licence agreement with the Proprietors for the Operating Systems in the then standard form of the Proprietors) to:

2.1.1

Sell the Equipment to the Customer

2.1.2

Supply the Redsky IT System

2.1.3

Deliver the Equipment to the Location or to such other address as the parties may agree ("the Delivery Address") on or before the Planned Date of Delivery provided that if the Delivery Address is not the Location then the Customer shall at its own cost and risk store the Equipment at such address and deliver the Equipment from such address to the Location in accordance with the requirements of the Supplier

2.1.4

Install (subject to the Customer complying where necessary with the provisions of clauses 3.4 and 3.5) the Redsky IT System on the Equipment at the Location on or before the Planned Date of Delivery

2.1.5

Provide (if any) the Operating Documents

2.1.6

Grant the Licence

2.1.7

Provide the Maintenance and Support Cover and

2.1.8

Provide the other services and items hereinafter described

2.2

The Supplier reserves the right prior to completing delivery of the Equipment to make substitutions and modifications of the Equipment (including the substitution of an alternative item of equipment of any size for any item of the Equipment agreed to be supplied) provided that such substitutions and modifications will not materially affect the performance of the Equipment and will not result in any increase or decrease in the Equipment Price

2.3

Any date or time quoted by the Supplier for delivery of the Equipment and/or installation of the Redsky IT System on the Equipment and/or performance of any other obligation hereunder is given as a reasonable estimate at the relevant moment of such quotation but time is not and shall not be of the essence of the Contract and the Supplier shall have no liability whatsoever to the Customer for late or delayed delivery installation or performance

3.

PRICE AND PAYMENT

3.1

Any sums payable pursuant to the Contract are exclusive of any taxes or imposts now or hereafter levied or based upon such sums (including without prejudice to the generality of the foregoing Value Added Tax) which shall (where applicable) be paid by the Customer to the Supplier at the rate for the time being prescribed by law in England

3.2

The Equipment Price and the Programs Price shall be paid by the Customer to the Supplier at the times set out on the front page of the Contract provided that where the Equipment is delivered to the Delivery Address in installments the Supplier may (following any such delivery) invoice the Customer for a proportionate part of the Equipment Price and the Programs Price which would ordinarily be payable within 14 days after completion of the delivery of the Equipment to the Delivery Address or (if earlier) the Installation Date and the Customer will pay the amount due under such invoice within 14 days after the date of the same

3.3

The Maintenance and Support Fee shall be paid by the Customer to the Supplier in accordance with the provisions set out on the front page of the Contract

3.4

The Customer undertakes promptly to provide to the Supplier all necessary information and documentation that the Supplier may reasonably from time to time require to proceed uninterrupted with the performance of the Contract

3.5

In the event that the Supplier should incur any extra cost as a result of the Customers instructions or lack of instructions or as a result of interruptions delays overtime unusual hours mistakes or work for which the Supplier is not responsible all such extra cost (including manufacturers increases in prices announced during the period in question) shall be paid on demand by the Customer to the Supplier

3.6

Without prejudice to the provisions of clause 3.4 if by the Planned Date of Delivery the Supplier has not received from the Customer instructions sufficient to enable the Supplier to deliver or complete the delivery (as the case may be) of the Equipment to the Delivery Address and the Redsky IT System to the Location (including any delay due to export/import difficulties where the Delivery Address and/or the Location (as the case may be) is outside the Territory or a delay requested by the Customer) then:

3.6.1

The Supplier shall be entitled to arrange storage of the Equipment and the Redsky IT System or the undelivered items thereof (as the case may be) on the Customers behalf and all such storage charges insurance and associated costs which may be incurred by the Supplier shall be discharged or repaid by the Customer on demand and the risk of deterioration and damage to the Equipment and the Redsky IT System so stored shall lie with the Customer and

3.6.2

The balance of the Equipment Price and the Programs Price together with the Maintenance and Support Fee shall (notwithstanding the provisions of clause 3.2) be paid by the Customer to the Supplier on the Planned Date of Delivery

3.7

The Supplier shall be entitled at any time before the period of 30 days immediately preceding the Planned Date of Delivery to vary the Total Price by giving written notice of such variation to the Customer The Contract shall be deemed to be varied accordingly by such notice of variation unless the Customer shall within 14 days after receipt of such notice terminate the Contract by giving notice in writing to the Supplier in which event neither party shall have any liability to the other in respect of such termination save for:

3.7.1

The return by the Supplier to the Customer of any sum paid to it pursuant to the Contract

3.7.2

The provisions of clauses 19.2 and 19.3 which shall apply mutatis mutandis and

3.7.3

The immediate return by the Customer at its own cost and risk to the Supplier of any Equipment delivered pursuant to the Contract

3.8

Where the Location is within the Territory the Total Price includes the cost of all delivery charges of the Equipment to the Delivery Address and the Redsky IT System to the Location by any method of transport selected by the Supplier

3.9

Where the Location is outside the Territory all delivery charges of the Equipment to the Delivery Address and the Redsky IT System to the Location (including but not limited to heavy gang handling hoisting and transportation charges) insurance costs import duties and levies are (unless otherwise agreed) not included in the Total Price and shall be the responsibility of the Customer The Supplier shall select the carrier but by so doing shall not thereby assume any liability in connection with shipment nor shall the carrier in any way be construed as an agent of the Supplier The Supplier shall not be liable for any damage or (when delay is due to delays in transportation or any other cause beyond the control of the Supplier) for delay in delivery or failure to deliver

3.10

If any sum payable pursuant to the Contract is not paid on or before its due date then (without prejudice to the other rights and remedies of the Supplier) the Supplier reserves the right to:

3.10.1

Charge interest (which interest shall be paid on demand by the Customer) on such sum on a day to day basis (as well after as before any judgment) from the date or last date for payment thereof to the date of actual payment (both dates inclusive) at the rate which is 2 per cent above the base rate of Midland Bank plc (or such other clearing bank in London as the Supplier may nominate) from time to time in force or 12 per cent (whichever is higher) compounded quarterly and/or

3.10.2

Suspend and/or delay the performance or further performance of the Contract (or any part thereof) including (without prejudice to the generality of the foregoing) altering the Planned Date of Delivery suspending the Maintenance and Support Cover and/or suspending the performance or further performance of any other contract between the parties and/or

3.10.3

Give not less than 7 days notice to the Customer of its intention to render the System inoperable if payment remains outstanding at the end of such period and if the Customer fails to comply with such notice in full the Supplier shall be entitled to render the System inoperable and for which purpose the Customer hereby irrevocably licences the Supplier its employees and agents to enter any premises of the Customer In the event of the System being so rendered inoperable the Supplier undertakes to render the same operational as soon as reasonably practicable following its receipt in full and in cleared funds of the outstanding sum together with its standard charge for the time being for making a System operable and/or

3.10.4

Demand immediate payment from the Customer of any other monies (whether or not invoiced) accrued due to the Supplier and unpaid by the Customer

3.11

If the Customer wishes to cancel the Contract in whole or in part before the Planned Date of Delivery (other than for any breach by the Supplier which would entitle the Customer to terminate) then the Customer may do so by notice in writing to the Supplier and the Supplier shall agree to the termination of the Contract in respect of the whole or the part of the Contract so cancelled upon the Customer paying to the Supplier as agreed and liquidated damages for the cancellation a sum equal to whichever is higher of the actual direct costs incurred by the Supplier plus 25 per cent on the one hand and 75 per cent of the Total Price for the Services so cancelled reduced by 15 per cent in respect of each complete calendar month unexpired between the date of cancellation and the Planned Date of Delivery (subject to a minimum of 35 per cent of the Total Price for the Services so cancelled) on the other

3.12

The amount of the Customers deposit paid under clause 3.2 together with any other sum paid pursuant to the Contract may be deducted by the Supplier from the cancellation charges payable under clause 3.11 and until the Supplier shall have received the cancellation charges payable under clause 3.11 in full the Supplier may treat the Contract as subsisting

3.13

Upon any cancellation in accordance with the provisions of clause 3.11 the provisions of clauses 19.2 and 19.3 shall apply mutatis mutandis and the Customer shall at its own cost and risk immediately return to the Supplier any Equipment delivered pursuant to the Contract

3.14

The Customer hereby waives any and all existing and future claims and set-offs against any payment due hereunder and agrees to make such payments regardless of any equity set-off or cross-claim the Customer may have against the Supplier

3.15

Any payments made by the Customer to the Supplier hereunder may be appropriated by the Supplier in or towards satisfaction of any sums due and owing to the Supplier hereunder or under any other contract between the parties notwithstanding that the Customer may have purported to appropriate such payments in some other way

4.

RISK INSURANCE AND TITLE

4.1

Title to each item or part of the Licensed Program Materials shall remain with the Supplier at all times and title to each item or part of the Operating Systems shall remain with the Proprietors at all times

4.2

Title to each item of the Equipment shall remain with the Supplier until the amount payable for that item has been received by the Supplier in full and in cleared funds together with any other sums that may be due under the Contract and/or any other contract between the parties

4.3

Risk in each item of the Equipment shall pass to the Customer on the Actual Date of Delivery (where the Delivery Address is inside the Territory) or upon placement into the carriers possession (where the Delivery Address is outside the Territory) and accordingly the Customer shall be responsible for ensuring that each item of the Equipment is insured against all normal risks from the time risk passes for full replacement value

4.4

Until title to an item of the Equipment has passed the Customer shall hold it as fiduciary agent and bailee for the Supplier shall not move it from the Delivery Address or the Location (as the case may be) without the prior written consent of the Supplier shall leave in place all marks and indications of the ownership of the Supplier and shall store it separately from other goods Without prejudice to the generality of the foregoing the Customer shall have the right to use the relevant item of the Equipment at the Location in the course of its business prior to title passing but shall not have the right to resell lease hire charge or otherwise dispose of it during such period

4.5

As a separate and independent right the property in any item of the Equipment belonging to the Supplier shall remain in the Supplier notwithstanding that it may be incorporated into other goods or products which include the goods or materials of the Customer and/or third parties

4.6

Until such time as title to an item of the Equipment has passed:

4.6.1

The Supplier shall have absolute authority to repossess retake sell or otherwise deal with or dispose of any part of the Equipment in which title remains vested in the Supplier and

4.6.2

The Customer hereby irrevocably licences the Supplier its employees and agents to enter any premises of the Customer in which any item of the Equipment is or is reasonably believed by the Supplier to be situate without notice for the purposes of satisfying itself that

such item is stored separately and identified as the property of the Supplier and/or of repossessing or retaking the relevant item of the Equipment

5. INSTALLATION

5.1

The Supplier shall not carry out or be responsible for the removal of doors widening of entrances or any structural work of any description at the Location which works shall be undertaken by the Customer at its sole expense prior to the Planned Date of Delivery

5.2

Without prejudice to the provisions of clause 5.1 the Customer shall at its own expense and prior to the Planned Date of Delivery prepare and provide and subsequently maintain a suitable installation environment at the Location (such environment being described in the then current Environmental Specification and Installation Guide of the Supplier) together with all necessary electrical power sources (as described in the then current Power Specification of the Supplier)

5.3

Subject as provided in clauses 5.1 and 5.2 the Supplier shall provide all tools, labour and haulage necessary to effect the delivery of the Equipment and the installation of the Redsky IT System on the Equipment at the Location and the Customer shall provide free full safe and uninterrupted access all necessary services and facilities including electrical power and obtain all licences consents and permissions necessary to enable such delivery and installation to be effected lawfully and expeditiously including (where the Delivery Address and/or the Location is outside the Territory) all necessary export/import documentation

5.4

All packing cases skids drums and other packing materials used for delivery of the Equipment to the Delivery Address must be promptly returned by the Customer to the Supplier in good condition and at the expense of the Customer. The Supplier reserves the right to charge for any such cases and materials not so returned

5.5

Acceptance of the Equipment and the Redsky IT System shall be deemed to take place upon the earlier of 7 days after delivery of the same or the Installation Date or (if there are Operating Documents) the Supplier demonstrating to the Customer that the Redsky IT System is in all material respects accepting processing and reporting data in accordance with such Operating Documents

6. OPERATING DOCUMENTS

6.1

The Supplier may at its sole discretion prepare and provide the Customer with two copies of a set of Operating Documents containing information to enable the Customer to make proper use of the System. If the same are so provided and the Customer requires further copies then these will be provided by the Supplier in accordance with its standard scale of charges from time to time in force. The Supplier may at its sole discretion from time to time update correct or modify the Operating Documents

7. CONFORMITY WITH LEGISLATION

7.1

If the Location is outside the Territory the Customer hereby agrees to provide the Supplier with all information necessary to enable it to comply with the relevant local laws and regulations and shall promptly advise any change or proposed change thereto but the Supplier shall be under no obligation whatsoever to carry out any modification to the Redsky IT System so that it conforms to such laws and regulations and shall not be liable for any loss of profits business anticipated savings or other financial indirect or consequential loss whatsoever arising out of any change in the relevant local laws and regulations

8. LICENCE PROPRIETARY RIGHTS AND CONFIDENTIALITY

8.1

The Customer acknowledges and accepts that all intellectual property rights in the Licensed Program Materials (other than in any material provided by the Customer) shall be and shall remain at all times vested in and the property of the Supplier (acting as distributor for the owner of the Licence Programs Materials if applicable) and the Customer shall have no right or interest in the Licensed Program Materials except as provided in the Contract

8.2

In consideration of the Customer entering into the Contract and paying the deposit referred to in clause 3.2 the Supplier hereby grants (subject to the Supplier receiving from the Customer in full and in cleared funds all sums that may be due under the Contract and/or any other contract between the parties) to the Customer with effect from the date of supply/provision of the Licensed Program Materials a personal non-exclusive and non-transferable licence to use the Licensed Program Materials with the Equipment at the Location provided that the Customer shall not be entitled either to assign such licence or to sub-licence the use of the whole or any part of the Licensed Program Materials

8.3

The Supplier expressly reserves the right to grant licences to use the Licensed Program Materials to third parties

8.4

The licence referred to in clause 8.2 shall not be deemed to extend to the Operating Systems or any programs or materials which are not supplied by the Supplier

8.5

The Supplier may in its absolute discretion make available to the Customer such improvements and modifications to the Programs as the Supplier shall make and release from time to time which are compatible with the version installed at the Location but for the avoidance of doubt the foregoing provisions of this clause shall not apply or extend to new software products which are intended by the Supplier to replace existing versions of the Programs

8.6.1

The Customer undertakes not to copy duplicate modify or adapt the Licensed Program Materials or any part or parts thereof or incorporate the Licensed Program Materials in to computer programs not supplied by the Supplier for any purpose whatsoever without the prior written consent of the Supplier except as set out in clause 8.12 of the Contract and will permit the Supplier to check the use of the Licensed Program Materials at all times and for that purpose the Customer hereby irrevocably licences the Supplier its agents and employees to enter any of the Customers premises without notice

8.6.2

If the Customer does copy duplicate modify adapt or incorporate the Licensed Program Materials in breach of clause 8.6.1 then such action shall not affect any of the Customers duties and obligations under the Contract and in particular such copied duplicated modified adapted or incorporated Licensed Program Materials would be subject to the terms of the Contract

8.6.3

In the event of any such modification adaptation or incorporation of the Licensed Program Materials the Supplier reserves the right to discontinue the Maintenance and Support Cover in relation to such modified adapted or incorporated Licensed Program Materials without prejudice to the other rights of the Supplier arising from the Customers breach of the Contract

8.7

The Customer shall treat as confidential and keep secret all the Information and shall not without the prior written consent of the Supplier divulge or make available any part of the Information to any person except:

8.7.1

The employees of the Customer and then only to those employees who need to know the same and to such extent as may be necessary

8.7.2

The Customers auditors HM Inspector of Taxes HM Customs & Excise and other persons or bodies having a right duty or obligation to know the business of the Customer and then only in pursuance of and to the extent of such right duty or obligation

8.8

The Customer undertakes to ensure that the persons and bodies mentioned in clause 8.7.2 are made aware prior to the disclosure to them of any part of the Information that the same is confidential and that they owe a duty of confidence to the Supplier which includes an obligation neither to copy or duplicate the Licensed Program Materials or any part or parts thereof nor to make any disclosure relating thereto to a third party

8.9

The Customer shall take all reasonable precautions to preserve the confidentiality of the Information including without prejudice to the generality of the foregoing setting up effecting and maintaining adequate security measures to protect the confidentiality of the Licensed Program Materials and to safeguard the Licensed Program Materials from theft access or use by any person other than as set out in the previous sub-clauses of this clause 8 and which security measures shall include the use of dongles

8.10

The Customer shall immediately notify the Supplier in writing if it becomes aware of any unauthorised use of the whole or any part of the Information including without prejudice to the generality of the foregoing a breach of confidence by any person to whom the Customer divulges or makes available all or any part of the Information and shall give the Supplier all reasonable assistance in connection with any steps or proceedings which the Supplier may take or institute as a result of the same

8.11

In the event that any of the Licensed Program Materials should come into the hands of a third party through the Customer or any employee or former employee of the Customer or any other person who has obtained access to the Licensed Program Materials via the Customer (except an Micros Travel Representative) then the Customer shall indemnify the Supplier on demand from and against any loss or damage which the Supplier may sustain or incur as a result of the same (including but not limited to loss of business opportunities and profits)

8.12

Whilst the Customer is not permitted under the terms of clauses 8.6.1 and 11.1.3 of the Contract to decompile the Programs the Supplier is prepared to make available facilities to enable the Customer to decompile the Programs for the sole purpose of achieving interoperability with other software if (1) the Customer has given prior written notice to the Supplier of its need to use such facilities for such purpose including full and complete details of the same and (2) the Supplier has first received from the Customer in full and in cleared funds payment of such charges as the Supplier may require for the Customer using such facilities

8.13

The foregoing obligations as to confidentiality shall remain in full force and effect notwithstanding any termination of the Contract

9.

THIRD PARTY INTELLECTUAL PROPERTY RIGHTS

9.1

The Customer shall indemnify the Supplier on demand and keep the Supplier fully and effectively indemnified against any and all costs claims demands expenses losses damages charges proceedings actions and liabilities of whatsoever nature arising out of or in connection with any claim that the use by the Supplier of any information or materials supplied by the Customer for the purpose of enabling the Supplier to discharge its obligations under the Contract infringes the intellectual property rights of any third party

9.2

The Supplier shall indemnify and keep the Customer fully and effectively indemnified against any and all costs claims demands expenses losses damages charges proceedings actions and liabilities of whatsoever nature reasonably incurred by the Customer and arising out of or in connection with any claim that the authorised and normal use or possession of the Equipment and/or the Programs or any part thereof infringes in the Territory the intellectual property rights of any third party provided that it is a condition of such indemnity that:

9.2.1

The Customer shall promptly notify the Supplier in writing of any allegations of infringement of which it becomes aware and will not make any admissions or concessions without the Suppliers written consent

9.2.2

The Customer at the Suppliers request and reasonable expense shall allow the Supplier to conduct and/or settle all negotiations and litigation in its absolute discretion

9.2.3

The Customer shall at the request of the Supplier afford all reasonable assistance with such negotiations or litigation and shall be reimbursed by the Supplier for any reasonable out of pocket expenses incurred in so doing

9.2.4

The costs incurred or recovered in all negotiations and litigation shall (subject as aforesaid) be for the Suppliers sole account

9.3

The indemnity given under clause 9.2 will not apply to infringement (or alleged infringement) arising as a result of the use of the Equipment and/or the Programs in combination with any equipment and/or computer programs not supplied or approved by the Supplier for use with the Equipment and/or the Programs or infringement caused or contributed to by any act or omission of the Customer (including use by the Customer of the Programs in breach of any provision of the Contract)

9.4

If the Customers authorised and normal use or possession of the Equipment and/or the Programs or any part thereof is alleged or (in the reasonable opinion of the Supplier) is likely to be alleged or is held by a court of competent jurisdiction to constitute an infringement of a third parties intellectual property rights or if the Supplier is advised by legal counsel that such use or possession is likely to constitute such an infringement then the Supplier may at its own expense and absolute discretion:

9.4.1

Procure for the Customer the right to continue using and possessing the Equipment and/or the Programs in question

9.4.2

Modify or replace the Equipment and/or the Programs in question or obtain any necessary licence (without detracting from their overall performance) so as to avoid the infringement (in which event the Supplier shall not be liable to compensate the Customer for the amount of any direct or indirect loss and/or damage sustained or incurred by the Customer during such modification or replacement)

9.5

The Customer shall not unreasonably refuse to accept any solution proposed by the Supplier pursuant to clause 9.4

9.6

The foregoing provisions of this clause 9 together with the provisions of clause 18 states the entire liability of the Supplier to the Customer in respect of any infringement of the intellectual property rights of any third party

10.

FAULTS DEFECTS AND ERRORS

10.1

Except as expressly provided in the Contract no warranty obligation condition undertaking or term express or implied statutory or otherwise as to condition quality performance merchantability durability fitness for purpose or otherwise is given or assumed by the Supplier and all such warranties obligations conditions undertakings and terms are hereby excluded to the fullest extent permitted by law whether in respect of any period prior to acceptance of the Equipment and the Redsky IT System or afterwards

10.2

The Supplier warrants that the Equipment will be free from defects in materials workmanship and installation for a period of 6 calendar months after the Installation Date and (if there are Operating Documents) the Programs will in all material respects provide the facilities and functions set out in the Operating Documents for a period of 6 calendar months after the Installation Date

10.3

The warranties contained in clause 10.2 shall not apply if notification of any breach of warranty (including full and complete details of the same) is made more than 6 calendar months after the Installation Date and (in any event) are contingent upon the ordinary and proper use by the Customer of the System in the application for which it is intended and do not cover causes other than ordinary and proper use including without prejudice to the generality of the foregoing breaches by the Customer of the provisions of clauses 8.6.1 and 11

10.4

The Customer agrees that the Suppliers sole liability and the Customers sole remedy in respect of the remedy of any breach of the warranties contained in clause 10.2 is to rely upon the Maintenance and Support Cover and the Customer shall not be entitled to any other remedy for breach of such warranties and in particular shall not be able to claim damages (including without limitation for any loss of use of the System or loss of or spoiling of the Customers data) or repudiate the Contract

10.5

The Supplier specifically disclaims all liability for performance of the System in respect of the usefulness of results produced by it or its possible effect on the business of the Customer

10.6

The Supplier does not warrant that the operation of the Programs will be uninterrupted and error free

10.7

The foregoing provisions of this clause 10 together with the provisions of clause 18 states the entire liability of the Supplier to the Customer in respect of any fault defect or error in or failure of the Equipment and/or the Redsky IT System which are notified by the Customer to the Supplier on or after the Installation Date

11.

OBLIGATIONS OF THE CUSTOMER

11.1

The Customer shall not:

11.1.1

Make any movement of or alteration addition or attachment to the Equipment without the prior written consent of the Supplier

11.1.2

Use any equipment and/or computer programs in conjunction with the System which are not supplied or approved by the Supplier for use with the System including software releases other than the then current release of the Supplier

11.1.3

Adjust alter change adapt maintain repair modify service or make additions to the Equipment or any part of the Licensed Program Materials nor de-compile or permit the whole or any part of the Programs to be combined with or become incorporated in any other programs not supplied by the Supplier nor attempt to do any of such things nor request permit or authorise anyone other than a Micros Travel Representative to carry out the same

11.1.4

Change remove or obscure any labels plates insignia lettering or other markings which are on any part of the Equipment or which may be placed on any part of the Equipment by the Supplier or by any person authorised by the Supplier

11.2

The Customer shall keep preserve protect and operate the System in a proper and prudent manner and in such connection shall advise such of its staff who need to know the same of the extent of the Maintenance and Support Cover (as set out in the Contract) follow all advice and directions given by the Supplier in the Operating Documents (if any) or other literature published and/or furnished by the Supplier and shall in particular only use those materials and supplies approved by the Supplier and shall ensure that only competent and trained employees of the Customer are allowed to operate the System

11.3

The Customer shall follow best computer practice in the matters of housekeeping and the regular taking of back-ups so as to minimise the risk of loss or failure flowing from any fault defect or error in or failure of the System Such back-ups should (in particular) be kept in a secure fire proof environment and a up to date register (which register shall be open to and a copy thereof given to the Supplier on demand) of all such copies maintained by the Customer For the avoidance of doubt the Supplier shall under no circumstances be liable to the Customer for loss (whether direct or indirect) of profits contracts operation time data or programs or for any other form of indirect or consequential loss or damage or costs whatsoever which arise from the Customers failure to comply with its obligations under this clause even if the Supplier shall have been advised of the possibility thereof The Customer should be aware that the Contract does not provide for the provision of disaster recovery services

11.4

In the interests of health and safety the Customer shall ensure that personnel of the Supplier and/or the Micros Travel Representatives who are on the premises of the Customer for the purposes of the Contract are accompanied at all times by a member of staff of the Customer familiar with such premises of the Customer and safety procedures therein

11.5

The Customer shall make available to the Supplier free of charge all reasonable facilities and services which are required to enable it to provide the Maintenance and Support Cover including without limitation sufficient supporting documents to allow faults defects and errors to be diagnosed and reproduced computer runs core dumps telecommunications facilities printouts data preparation office accommodation typing photocopying and co-operating fully with the Micros Travel Representative in the diagnosis of any fault defect or error in or failure of the System

12.

EQUIPMENT MAINTENANCE

12.1

If the Location is within the Territory maintenance for the Equipment shall be provided by the Supplier during the time the Maintenance and Support Cover forms part of the Contract and shall comprise of remedial maintenance and (at the sole discretion of the Supplier) routine preventative maintenance

12.2

The remedial maintenance shall consist of the Supplier (following receipt of a detailed request from the Customer) rectifying a breakdown or malfunction of the Equipment during the hours specified on the front page of the Contract by testing adjusting or repairing the Equipment as the Supplier shall deem appropriate

12.3

The Supplier will use reasonable endeavours to carry out remedial maintenance within the response time specified on the front page of the Contract but such response time is a reasonable estimate only and shall not be binding upon the Supplier or of the essence

12.4

Routine preventative maintenance (if any) shall consist of the Supplier making visits to the Location and performing such routine preventative maintenance to the Equipment as the Supplier shall from time to time deem necessary to keep the Equipment in good working order and the work involved (if any) will be performed during the hours of 9 a.m. to 5 p.m. Monday to Friday (excluding public holidays) by prior appointment with the Customer

12.5

Notwithstanding the provisions of clause 12.4 the Supplier may if it considers it expedient so to do carry out routine preventative maintenance (if any) at the same time as it carries out any remedial maintenance

12.6

The Supplier reserves the right to replace the whole of the Equipment or any part or parts thereof which may be found to be faulty or in the need of investigation when carrying out either remedial maintenance or (if any) routine preventative maintenance

12.7

When replacement parts are fitted the Equipment or any part or parts thereof removed shall become the property of the Supplier whilst the replacement equipment or replacement parts shall become the property of the owner of the Equipment

12.8

The Customer will permit the Micros Travel Representatives to have full access to the Equipment at all reasonable times for the purposes of inspection or the carrying out of remedial maintenance or (if any) routine preventative maintenance Failure or delay by the Customer in allowing such access shall entitle the Supplier to make a charge for waiting time at the standard charge in force of the Supplier for the time being for the same which charge shall be paid by the Customer on demand and shall be in addition to any other charges due under the Contract

13.

SYSTEM SUPPORT

13.1

The support provided by the Supplier in respect of the System during the time the Maintenance and Support Cover forms part of the Contract shall comprise of the Supplier (following receipt of a detailed request from the Customer) giving such telephone advice as is necessary during the hours specified on the front page of the Contract to resolve the difficulties and queries of the Customer in using the Programs (but not for the avoidance of doubt the Operating Systems) and where such support is by modem the Customer shall be responsible for making and the cost of all telephone calls

13.2

The Supplier will use reasonable endeavours to carry out such support within the response time specified on the front page of the Contract but such response time is a reasonable estimate only and shall not be binding upon the Supplier or of the essence

14.

EXCLUSIONS TO THE MAINTENANCE AND SUPPORT COVER

14.1

The Maintenance and Support Cover neither includes anything arising out of a breach by the Customer of the provisions of clause 11 nor does it include the following:

14.1.1

Works arising out of the failure of the Customer to comply with directions instructions and recommendations issued by the Supplier and/or the Micros Travel Representatives and/or the Proprietors whether orally or in writing

14.1.2

Works arising out of the failure fluctuation intermittent operation or the inadequacy of the electrical power supply or air conditioning or dust or humidity control or other environmental conditions at the Location

14.1.3

The supply repair renewal or fitting of operating supplies including (without prejudice to the generality of the foregoing) cards tapes disk packs stationery printing ribbons typeheads toners paper and similar accessories and the replacement painting or refinishing of decorative parts trims or cases

14.1.4

Electrical or environmental work external to the System

14.1.5

The maintenance of machines or other devices not supplied by the Supplier

14.1.6

Works caused directly or indirectly as a result of the connection of the Equipment by electrical or mechanical means to another item of equipment or device

14.1.7

Services (including visits) made at the request of the Customer but which the Supplier finds are frivolous or not necessary

14.1.8

Any fault or works arising from any fault in any attachments or associated equipment (whether or not supplied by the Supplier)

14.1.9

Works arising out of any act of God fire flood water wind lightning war act of violence or any other similar occurrence

14.1.10

The recovery or reconstruction of any data or programs lost or spoiled as a result of any breakdown of or fault or defect or error in the System

14.1.11

The making of specification changes and services in connection with the relocation of the System

14.1.12

Works arising out of the neglect misuse or abuse of the Equipment or wilful or accidental damage to the Equipment other than by the Supplier

14.1.13

Works caused by or attributed to misuse of the Redsky IT System or operator error or omission

14.1.14

Works and/or services to the Equipment which the Supplier (in its absolute discretion) deems to be beyond economic repair and for the purposes of this clause 14.1.14 "beyond economic repair" shall mean where the cost of such works and/or services in aggregate (if the same were charged by the Supplier to the Customer at its standard charge in force for the time being) exceeds 20 per cent of the

original cost to the Supplier of the relevant item of Equipment and/or the Supplier is unable to obtain the spares required for the Equipment and/or prior Maintenance and Support Cover for the Equipment has involved frequent telephone advice/remedial maintenance and/or it is not good business practice for the Supplier to retain individuals for the purpose of Maintenance and Support Cover for the Equipment or hold spares for the Equipment

14.1.15

Works and/or services arising out of the failure fluctuation intermittent operation or the inadequacy of cabling at the Location

14.2

The Supplier shall not for the avoidance of doubt be under any obligation to provide any services or works of maintenance and support which are at the sole discretion of the Supplier or are not covered by or are excluded from the Maintenance and Support Cover

14.3

If the Supplier agrees to provide any services or works of maintenance and support which are at the sole discretion of the Supplier or are not covered by or are excluded from the Maintenance and Support Cover (including Maintenance and Support Cover outside the hours specified on the front page of the Contract) then the Customer shall become liable to pay the Supplier such charge as may be the standard charge in force of the Supplier for the time being for the same which charge shall be paid within 14 days after receipt by the Customer of the Suppliers invoice therefore and shall be in addition to any other charges due under the Contract

14.4

Any consent given by the Supplier pursuant to clause 11.1.1 may be revoked by the Supplier if the performance of the System or the Maintenance and Support Cover is thereby impaired In the event of such revocation the Customer shall at its own expense relocate and reinstate the System in its original position and to its original condition and standard of performance and between the time of revocation on the one hand and such relocation and reinstatement on the other the Supplier shall have no obligation to provide the Maintenance and Support Cover

15.

UNAUTHORISED MAINTENANCE

15.1

Without prejudice to the provisions of clauses 8.6.3 and 14.1.1 in the event that the Customer shall be in breach of the provisions of clauses 8.6.1 or 11 then the Supplier may (subject to termination as elsewhere provided in the Contract) forthwith terminate the Maintenance and Support Cover by notice in writing to the Customer and:

15.1.1

The Customer shall (if such termination takes effect within a period of two calendar years commencing on completion of the delivery of the Equipment to the Delivery Address or (if earlier) the Installation Date) pay to the Supplier a sum equal to one calendar years Maintenance and Support Fee at the rate prevailing for the same on the date of such termination as agreed and liquidated damages for the termination.

15.1.2

The Customer shall not be entitled to any refund of Maintenance and Support Fees or any part of them paid by it prior to or after such termination

15.2

Save as provided in clause 15.1 any termination of the Maintenance and Support Cover pursuant to the provisions of that clause 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 hereof which is expressly or by implication intended to come into or continue in force on or after such termination

16.

ONGOING MAINTENANCE AND SUPPORT FEES

16.1

The Supplier shall be entitled at any time and from time to time to increase the Maintenance and Support Fee with effect from the expiry of the period of one calendar year after completion of the delivery of the Equipment to the Delivery Address or (if earlier) the Installation Date without giving prior written notice to the Customer by a percentage equal to the percentage rise in the Retail Prices Index in England for the period from such date (in the case of the first such increase) or the date on which the immediately preceding increase came into effect pursuant to this clause (in the case of subsequent increases) up to the date of such increase In the event that the Supplier desires any such increase to be greater than the percentage rise in the Retail Prices Index in England for the relevant period then the Supplier shall first give to the Customer not less than 90 days prior written notice

16.2

The Customer shall be responsible for the costs incurred by the Micros Travel Representatives in traveling to the Location for any purpose and for the provision of accommodation and meals for Micros Travel Representatives whilst Micros Travel Representatives are at the Location conducting works of installation or for the purposes of the Maintenance and Support Cover or for any other purpose and such accommodation and meals shall be provided by the Customer in areas used by guests and not in staff areas In the event that the Customer does not provide such facilities it will be liable to pay the Supplier subsistence charges at such rate per man as may be the standard charge in force of the Supplier for the time being for the same which charge shall be paid by the Customer on demand and shall be in addition to any other charges due under the Contract .

17.

TERM OF MAINTENANCE AND SUPPORT COVER

17.1

Subject to termination as elsewhere provided in the Contract the Maintenance and Support Cover shall be for an initial period of one year commencing on completion of the delivery of the Equipment and/or the Programs to the Delivery Address or (if earlier) the Installation Date of the Equipment and/or the Programs and shall thereafter be automatically renewed for successive periods of one year and shall remain in force unless and until terminated by either party giving to the other not less than six months prior written notice expiring on the last day of the said initial period or on the last day of any subsequent one year period and the Customer shall not be entitled to any refund of Maintenance and Support Fees or any part of them paid by it prior to or after such termination

17.2

In the event of part (but not all) the Maintenance and Support Cover being terminated the Licence in respect of those Licensed Program Materials affected by such termination shall automatically cease to be of effect and the provisions of clauses 19.2 and 19.3 shall apply mutatis mutandis

17.3

Save as provided in clauses 17.1 and 17.2 any termination of the Maintenance and Support Cover pursuant to the provisions of that clause 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 hereof which is expressly or by implication intended to come into or continue in force on or after such termination

17.4

Subject to the rights of the parties to terminate maintenance and support cover for the Equipment and the Programs elsewhere in this agreement, either party may terminate maintenance and support cover for a small quantity of Equipment (less than 25% as compared to the original purchase of Equipment or as compared to the total inventory of Equipment being maintained at the relevant site) and/or a peripheral item of software from the Programs (that is not the front or back office element of the property management system or the central reservations system) by giving not less than three months prior written notice at any time. The parties will not use multiple terminations within a twelve month period under this clause to achieve termination of certain Equipment and/or certain of the Programs that would normally require notice under clause 17.1 above.

18. LIABILITY

18.1

The Customer shall indemnify the Supplier on demand and keep the Supplier fully and effectively indemnified against any loss or damage (including any legal costs and expenses) to any property or injury to or death of any person caused by the act neglect default or wilful misconduct of the Customer its employees agents or sub-contractors except and in so far as such loss is due to the act neglect default or wilful misconduct of the Supplier under the terms of the Contract

18.2

The Supplier shall indemnify the Customer and keep the Customer fully and effectively indemnified up to a limit of £5 million against loss or damage (including reasonable legal costs and expenses) to any tangible property caused by the act neglect default or wilful misconduct of the Supplier its employees agents or sub-contractors except and in so far as such loss is due to the act neglect default or wilful misconduct of the Customer under the terms of the Contract or otherwise

18.3

The following provisions set out the entire liability of the Supplier in respect of any breach of its obligations arising under or in connection with the Contract including (without prejudice to the generality of the foregoing) any tortious act or omission AND THE CUSTOMERS ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF THIS CLAUSE

18.3.1

The liability of the Supplier for death or personal injury of the Customer and its employees arising from the negligence of the Supplier or that of its employees agents or sub-contractors shall not be limited

18.3.2

The Supplier shall not in any circumstances be liable whether in contract tort or otherwise for any indirect or consequential loss or damage howsoever arising and of whatsoever nature suffered or incurred by the Customer or any third party including (without limitation) loss of profits loss of contracts loss of data loss of operation time or loss of use of any equipment or process suffered either directly or indirectly by the Customer or any third party or any loss of anticipated earnings or savings

18.3.3

Subject as aforesaid the liability of the Supplier to the Customer or any third party for direct contractual loss arising out of or in connection with its performance of the Contract whether in tort or otherwise shall in respect of any one incident or series of incidents attributable to the same cause be limited to and shall not in any circumstances exceed two times the Total Price (excluding Maintenance and Support Fees) ("the Excess") or (if the Excess exceeds the sum of £500,000 or if the Excess is held by any court of competent jurisdiction to be illegal or unenforceable by virtue of unreasonableness) the sum of £500,000

18.4

Except as set out in clause 18.3 the Supplier shall have no liability to the Customer or any third party hereunder unless the Customer shall have served a notice containing full and complete details of any claim upon the Supplier within 6 calendar months after the date the Customer first became aware of the circumstances giving rise to a claim or the date when it ought reasonably to have become so aware (whichever shall be the earlier)

18.5 The Redsky IT terms and conditions in this agreement relating to the performance or non-performance of Redsky IT and third party products apply to the SABS product however the following disclaimer applies in respect of transactions processed through SABS. Redsky IT does not warrant that the SABS software will be bug or error free nor that it will run without interruption. If SABS fails to process any transaction at any time then in the event that the failure to process the transaction is the sole responsibility of Redsky IT then Redsky IT liability will be limited to the transaction charge made by Redsky IT to the Customer in respect of the individual transaction that failed to process. In the event that the failure to process the transaction is not the sole responsibility or substantially the responsibility of Redsky IT then Redsky IT will have no liability in respect of the failure to process the transaction. Furthermore Redsky IT do not recommend that you process a transaction through SABS where the traveling party is to collect Tickets On Departure within 14 days of the date of the transaction. If the Customer does decide to process the transaction within this timeframe then Redsky IT will have no liability whatsoever in respect of any failure for the transaction to be properly completed.

19. TERMINATION

19.1

The Contract (including the Licence and (if not already terminated) the Maintenance and Support Cover) may notwithstanding anything else contained in the Contract be terminated:

19.1.1

By the Supplier forthwith on giving notice in writing to the Customer if the Customer shall fail to pay any sum due under the terms of the Contract and such sums remain unpaid for 14 days

19.1.2

By either party forthwith on giving notice in writing to the other if the other commits any material or persistent breach of any term of the Contract (other than any failure by the Customer to make any payment in which event the provisions of clause 19.1.1 shall apply) and (in the case of a breach capable of being remedied) shall have failed to remedy the breach within 30 days after receipt of a request in writing from the other party so to do

19.1.3

By either party forthwith on giving notice in writing to the other if the other shall have a receiver or administrative receiver appointed of it or over any part of its undertaking or assets or shall pass a resolution for winding-up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction shall make an order to that effect or if the other shall become subject to an administration order or shall enter into any voluntary arrangement with its creditors or shall cease or threaten to cease to carry on business

19.1.4

By the Supplier forthwith on giving notice in writing to the Customer if the Maintenance and Support Cover is terminated as elsewhere provided in the Contract or any other contract between the parties is terminated or the licence referred to in clause 8.2 is terminated

19.1.5

By the Supplier forthwith on giving notice in writing to the Customer if any country in which the Customer is for the time being incorporated and/or trading is outside England and analogous events to those mentioned in clause 19.1.3 occur in respect of the Customer in such country or countries

19.1.6

By the Supplier forthwith on giving notice in writing to the Customer if control (as defined for the purposes of section 416 of the Income and Corporation Taxes Act 1988) of the Customer shall be transferred to any person other than the person in control of the Customer at the date hereof

19.1.7

If the country in which the Location is situate and/or any country in which any office of the Customer is situate is outside the Territory by the Supplier forthwith on giving notice in writing to the Customer if diplomatic relations between such country or countries on the one hand and any country in the Territory on the other make the continuance of the Contract unduly difficult

19.2

Forthwith upon termination of the Contract the Customer shall no longer be in possession of the Licensed Program Materials with the Suppliers consent and the Customer at its own expense shall immediately return to the Supplier the Licensed Program Materials or if requested by the Supplier shall destroy the same (in the case of the Programs by erasing them from the magnetic media and/or the equipment in which they are stored) and certify in writing to the Supplier that they have been so destroyed

19.3

Notwithstanding but in order to ensure compliance with the provisions of clause 19.2 forthwith upon termination of the Contract the Supplier its employees and agents may without notice enter any of the Customers premises in which the Licensed Program Materials or any part thereof is or is reasonably believed by the Supplier to be situate and so that the Customer hereby irrevocably licenses the Supplier its employees and agents to enter any such premises for that purpose

19.4

The Customer hereby acknowledges that the Supplier will suffer indirect and/or consequential loss and/or damage including (without limitation) loss of profit in the event that the Customer fails to pay all or any of the deposit referred to on the front page of the Contract and the Supplier consequently terminates the Contract before installing the Redsky IT System on the Equipment at the Location

19.5

Any termination of the Contract (howsoever occasioned) shall (save as aforesaid and subject to the Customer having no entitlement to the refund of Maintenance and Support Fees or any part of them paid by it prior to or after such termination) 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 hereof which is expressly or by implication intended to come into or continue in force on or after such termination

20.

ASSIGNMENT

20.1

The Customer may neither assign licence sub-licence transfer mortgage charge pledge or sublet the Contract nor any of its rights or obligations under the Contract nor purport to do any such things

20.2

Without prejudice to the provisions of clause 20.1 the Customer may enter into a agreement to finance all or part of the Total Price ("the Finance Agreement") with a third party provided that:

20.2.1

The Customer has notified the Supplier in advance of such intention

20.2.2

The terms of the Finance Agreement do not adversely affect the obligations of the Customer to the Supplier hereunder

20.2.3

Such third party is acceptable to the Supplier

20.2.4

Such third party agrees with the Supplier in writing both to be bound by the terms of the Contract as if it were a party to the same and that in the event of any inconsistency between the terms of the Contract on the one hand and the terms of the Finance Agreement on the other then the terms of the Contract shall prevail and

20.2.5

Upon entering into the Finance Agreement the Customer shall be deemed to have accepted that in the event of any inconsistency between the terms of the Contract on the one hand and the terms of the Finance Agreement on the other then the terms of the Contract shall prevail

20.3

The Supplier may assign sub-licence transfer mortgage charge pledge or sublet the Contract or any of its rights or obligations under the Contract and the beneficiary of the same may invoice the Customer direct accordingly

21.

FORCE MAJEURE

21.1

Notwithstanding anything else contained in the Contract neither party shall be liable for any delay in performing its obligations hereunder (except a failure to pay) if such delay is caused by circumstances beyond its reasonable control (including without limitation acts of God perils of the sea or air fire flood drought explosion sabotage accident embargo riot civil commotion including acts of local government and parliamentary authority industrial dispute strike breakdown of machinery or plant accident) 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 parties obligations shall be suspended during the period that the said circumstances persist without liability to the other party and such party shall be granted an extension of time for performance equal to the period of the delay Either party may if such delay continues for more than five weeks terminate the Contract forthwith on giving notice in writing to the other

22.

NOTICES

22.1

All notices which are required to be given hereunder shall be in writing and shall be sent to the address of the recipient set out in the Contract (or such other address in England as the recipient may designate by notice given in accordance with the provisions of this clause) and also (if the recipient is a limited company incorporated in England and/or Wales) the registered office for the time being of the recipient Any such notice may be delivered personally or by first class pre-paid letter or by facsimile transmission and shall be deemed to have been served if by hand when delivered if by first class post 48 hours after posting and if by facsimile transmission when dispatched.

23.

ENTIRE AGREEMENT AMENDMENT AND WAIVER

23.1

The Contract supersedes all prior communications representations statements agreements arrangements and understandings (either written or oral and whether by the Suppliers employees agents or representatives) between the parties and constitutes the entire agreement between the parties relating to the subject matter hereof The Customer irrevocably and unconditionally waives any right it may have to claim damages or to rescind (in the case of misrepresentation) the Contract for any misrepresentation or warranty not set out specifically in the Contract unless such misrepresentation or warranty was made fraudulently No addition or alteration to or modification of any provision of the Contract shall be binding upon the parties unless made by a written instrument signed by a duly

authorised representative of each of the parties Each provision of the Contract shall be construed separately and notwithstanding that any such provision may prove or found to be illegal or unenforceable the remaining provisions of the Contract shall continue in full force and effect

23.2

No forbearance delay or indulgence by either party in enforcing the provisions of the Contract shall prejudice or restrict the rights of that party nor shall any waiver of its rights operate as a waiver of any subsequent breach and no right power or remedy herein conferred upon or reserved for either party is exclusive of any other right power or remedy available to that party and each such right power or remedy shall be cumulative

24.

INTERPRETATION

24.1

In the Contract:

24.1.1

Words importing the singular include the plural words importing any gender include every gender words importing persons include bodies corporate and unincorporate and (in each case) vice versa

24.1.2

The headings to the clauses are for ease of reference only and shall not affect the interpretation or construction of the Contract

24.1.3

Reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended extended or re-enacted

25.

AUTHORITY EXECUTION AND STATEMENTS

25.1

The Customer confirms to the Supplier that:

25.1.1

It has the power to enter into and perform the Contract and has taken all necessary action to authorise the entry into and performance of the same

25.1.2

The Contract constitutes legal and binding obligations of the Customer

25.1.3

The entry into and performance of the Contract by the Customer does not conflict with any law or regulation or any official or judicial order of any Governmental Authority

25.1.4

All authorisations approvals consents licences exemptions filings registrations notarisations and other matters official or otherwise required in connection with the entry into performance validity and enforceability of the Contract have been obtained or effected and are in full force and effect

25.2

If the Supplier and the Customer do not execute the Contract simultaneously any execution of the Contract by the Customer before the Supplier shall be deemed to constitute an offer by the Customer to enter into the Contract which offer may be accepted by the Supplier if the Supplier executes the Contract within 28 days after such execution by the Customer and which offer cannot be withdrawn during such period

25.3

Neither party shall make any detrimental statement (whether orally or in writing) concerning or pertaining to the others business or employees

26.

PROPER LAW AND JURISDICTION

26.1

The Contract shall be governed by and construed in accordance with the laws of England and the parties submit to the exclusive jurisdiction of the English Courts but without prejudice to the right of the Supplier to bring proceedings in any other jurisdiction where the Customer is for the time being incorporated or has assets

27.

THE OTHER ITEMS

27.1

In the event that training is included under the heading "The Other Items" on the front page of the Contract then the Supplier undertakes to provide training in the use of the Licensed Program Materials for the staff of the Customer as set out on the front page of the Contract and/or as subsequently agreed between the parties in terms of how many staff are to be trained in total how many staff can be trained at one time how many days training will be required where and when training is to take place the cost of the training and when the cost of training will be paid

27.2

In the event that commissioned software is included under the heading "The Other Items" on the front page of the Contract ("CS") then where the context so admits (but subject as hereinafter provided) CS shall be deemed to form part of the Programs and the foregoing provisions of the Contract shall apply as if CS were part of the Programs provided that in the event of any inconsistency between the said foregoing terms of the Contract on the one hand and the terms of this clause 27.2 on the other then the terms of this clause 27.2 shall prevail:

27.2.1

The price to be paid by the Customer to the Supplier for the CS shall be paid as to 25 per cent by way of deposit upon the date set out above and as to the balance on the Acceptance Date (as such term is hereinafter defined)

27.2.2

If the Customer wishes to alter all or any part of the CS then the Customer shall provide the Supplier with full written particulars of such alterations and with such further information as the Supplier may reasonably require and the Supplier reserves the right in its absolute discretion to refuse to give effect to the same (in which case the Contract shall continue in force unchanged so far as the CS is concerned) or to submit to the Customer a revised quotation for the CS Upon receipt of such quotation the Customer may either accept such quotation (in which case the Contract shall be amended in accordance therewith) or withdraw the proposed alterations (in which case the Contract shall continue in force unchanged so far as the CS is concerned) The Supplier shall be entitled to make a reasonable charge for considering such alterations and (where relevant) preparing the said quotation If the Customers request for such alterations results in a delay in the Installation Date then the Supplier shall not be liable for such delay and shall be entitled to an extension of time for performing its obligations equal to the period of the delay

27.2.3

Acceptance of the CS ("the Acceptance Date") shall be deemed to take place upon the earlier of 14 days after delivery of the same or the Installation Date or (if there are Operating Documents or there is a functional specification for the CS and the Customer so

requests) the Supplier demonstrating to the Customer that the CS is in all material respects accepting processing and reporting data in accordance with such Operating Documents or such functional specification

27.2.4

The Customer shall provide all information and documentation requested by the Supplier in order to allow the Supplier to design and write the CS. In the event that work is delayed or the extent of the work increased by delay or failure in providing such information or documentation the Supplier reserves the right to amend the price of the CS and the timescale of the Contract to take account of any increased cost or timescale of the delivery of the CS caused by such delay or failure

27.2.5

The Customer undertakes to provide the Supplier with such desks word processing copying and other office facilities at the Location as may be reasonably necessary to enable the Supplier to fulfil its obligations in relation to the CS under the Contract

27.2.6

The Customer agrees to provide the Supplier free of charge with such computer facilities (including computer consumables storage and data preparation facilities) as may be necessary to enable the Supplier to prepare write test and install the CS

27.2.7

The Customer shall not without the prior written consent of the Supplier (and so that each of sub-clauses 27.2.7.1 and 27.2.7.2 shall be deemed to constitute a separate agreement and shall be construed independently of the other):

27.2.7.1

At any time during the period from the date hereof to the expiry of six months after the Acceptance Date or the date of termination of the Contract (as the case may be) solicit or endeavour to entice away from or discourage from being employed by the Supplier any person who is or shall at any time between the date hereof and the Acceptance Date or the date of such termination (as the case may be) be one of the employees of the Supplier engaged in providing the CS provided however that this provision shall not apply to any person employed by the Supplier whose rate of gross basic contractual remuneration payable by the Supplier as at the date hereof (or as at the date of commencement of such persons employment if such employment shall commence after the date hereof) is less than £10,000.00 per annum

27.2.7.2

At any time during the period from the date hereof to the expiry of six months after the Acceptance Date or the date of termination of the Contract (as the case may be) employ or attempt to employ any person who is or shall at any time between the date hereof and the Acceptance Date or the date of such termination (as the case may be) be one of the employees of the Supplier engaged in providing the CS provided however that this provision shall not apply to any person employed by the Supplier whose rate of gross basic contractual remuneration payable by the Supplier as at the date hereof (or as at the date of commencement of such persons employment if such employment shall commence after the date hereof) is less than £10,000.00 per annum

27.3

In the event that cabling is included under the heading "The Other Items" on the front page of the Contract then where the context so admits the same shall (save as otherwise agreed) be provided by the Supplier to the Customer in accordance with the foregoing provisions of the Contract

27.4

In the event that cabling maintenance is included under the heading "The Other Items" on the front page of the Contract then where the context so admits the same shall (save as otherwise agreed) be provided by the Supplier to the Customer in accordance with the foregoing provisions of the Contract at an additional fee

28.

MAINTENANCE

28.1

Office hours will be denoted as standard on Schedule A of the Contract and will be 9am to 5pm (Standard British Time, either GMT or BST as applicable) Monday to Friday (exclusive of public holidays in England and Wales) with an estimated response time of 8 working hours after receipt of a detailed request during such hours and which response shall take place during such hours.