801:Mock Negotiations of Warranties, Limitations of Liability, & Indemnification

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The MITRE Corporation

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Reichhold, Inc.

Alexandre A. Montagu
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Assistant Vice President & Associate General Counsel, Intellectual Property
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Faculty Biographies

Robert N. Axelrod

Robert N. Axelrod is associate general counsel for The MITRE Corporation in McLean, Virginia. At MITRE he has primary responsibility for providing legal counsel in all areas of intellectual property and also provides advice on contracts and real estate matters.

Prior to joining MITRE, Mr. Axelrod held various legal and business positions in telecommunications and space-based high technology companies in the Washington, DC area. At those companies he provided legal counsel in a variety of areas, including licensing, government and commercial contracts, and international joint ventures and agreements. Between law school and the start of his legal career, he spent three years on active duty with the U.S. Army.

He helped organize a brownie troop and served for several years as their "cookie czar" for their annual fundraising cookie sale.

Mr. Axelrod has an AB from Princeton University and received his legal education at the University of Pennsylvania Law School.

William J. Calore

William J. Calore is assistant general counsel for Reichhold, Inc. in Durham, North Carolina. His responsibilities include providing legal counsel concerning domestic and international commercial agreements, mergers and acquisitions, antitrust and competition matters, and international intellectual property matters for the company on a global basis. Mr. Calore serves as chair of the board for Reichhold's Chinese joint venture, which is located in Beijing.

Prior to joining Reichhold, Mr. Calore served as general counsel for Atlas Copco North America, Inc. where he had overall responsibility for all legal affairs in North America. Prior to that, he served as general counsel for Volvo Penta of the Americas, Inc., a subsidiary of Volvo AB, and spent one year working for Volvo AB, in Goteborg, Sweden.

Mr. Calore received a BA from the College of the Holy Cross and his JD from Washington and Lee University, where he graduated with honors.

Alexandre A. Montagu

Alexandre A. Montagu is the general counsel of Lipper Inc, a subsidiary of Reuters Group PLC in New York. Mr. Montagu handles Lipper's domestic and international legal work and is also responsible for the management of the Reuters Group PLC's trademark portfolio globally.

He previously worked for Sullivan & Cromwell and is also an arbitrator for the International Chamber of Commerce.

Mr. Montagu is a graduate of Princeton University, summa cum laude, University of Cambridge in England, double first class honors, BA law, and the Harvard Law School, cum laude.

John T. Whelan

John T. Whelan is an assistant vice president and associate general counsel for Hughes Network Systems, Inc. in Germantown, Maryland. His primary practice areas focus on the procurement and enforcement of intellectual property rights and transactions involving intellectual property matters.

Prior to joining Hughes, Mr. Whelan was in private practice in Washington, DC.

John Whelan received a BS from the University of Maryland and JD from George Washington University Law School.

BLENDING AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into this ____ day of _____, 2004 (the "Effective Date") by and between ACCA A.S., existing under the laws of the Norway, and having its registered offices at _____, Oslo, Norway, ("Company") and ABA B.V., having its registered offices in Amsterdam, the Netherlands, and existing under the laws of the Netherlands ("Vendor").

WHEREAS Company is a leading manufacturer and supplier of the products throughout Europe, and

WHEREAS, Company desires to have Vendor custom blend the colour variants for these products as more specifically set forth hereunder; and

WHEREAS, in order for Vendor to properly blend the colour variants, Company needs to license certain of its proprietary formulations and techniques regarding the blending of the colour variants for its products to Vendor in order for it to properly blend the colour variants for the products; and

WHEREAS Company desires to grant to Vendor a limited license to the intellectual property sufficient to allow Vendor to make the products as well as the equipment necessary to add the colourants to the base coats; and

WHEREAS Vendor is willing to accept such a license and function as a toller of the products subject to the terms and conditions contained in this

NOW THEREFORE, in consideration of the mutual covenants herein contained, and intending to be legally bound, the parties hereto agree as follows:

1. **Definitions**. For the purpose of this Agreement the following terms shall have the following meanings:

   A. "Intellectual Property" shall refer collectively to all recipes, formulas, production processes, and know-how, as well as any other proprietary technology that is currently embodied in the Products (as that term is defined below), as listed in **Schedule I.A**, and attached hereto as **Exhibit A**, as well as any other technology that may later be included in or embodied in the Products. **Schedule I.A.** will be updated by the Parties from time to time to reflect any changes and/or additions to the Intellectual Property embodied in the Products; and

   B. "Product(s)" shall refer to all existing, modified, and new formulations and/or recipes that have been or are developed by Company as listed in Exhibit A, and

   C. "Equipment" shall refer to the equipment listed in Schedule I.C. that is used to add the colourants and the base coat.

2. License Grant.

A. Subject to the terms, obligations and limitations set forth in this and the following sections, Company hereby grants to Vendor a non-exclusive, non-transferable, ***royalty-free license*** to produce the Products that embody the Intellectual Property (without any right to sublicense others) for sale exclusively to Company's customers in the Territory, or as the parties otherwise agree in writing.

B. Vendor shall clearly mark all Products, packaging, and any promotional material therefore with the appropriate notices applicable to Company's trademarks and/or patents.

C. Vendor acknowledges Company is the sole proprietor of the Intellectual Property licensed herein, and agrees that it shall not in any way dispute or challenge the validity of the Intellectual Property and will not oppose or otherwise contest any application of Company with respect to its rights in the Intellectual Property.

D. In the event Vendor reasonably believes that the Intellectual Property rights licensed hereunder are being improperly used and/or infringed by a third party, then Vendor shall immediately notify Company of such infringement. Vendor agrees that it will, without compensation from Company, except for reimbursement of out-of-pocket expenses, assist in the prosecution of any infringement action by furnishing testimony, by joining as a voluntary plaintiff or third party plaintiff, or in any other way that may be appropriately requested by Company. Only Company may sue for any infringement of the Intellectual Property rights licensed hereunder, and only Company may recover any proceeds of enforcement of the Intellectual Property rights licensed hereunder.

E. In the event Vendor is notified or becomes aware that a third party claims infringement of any of its patents by the manufacture, use or sale of Products, Vendor shall promptly inform Company of such claim of infringement and shall supply Company with all information relevant to such claim.

3. Equipment & Manufacturing.

A. In order for Vendor to properly blend the recipes provided to Licensee under the terms of this Agreement, Company has provided to Vendor the Equipment listed in **Exhibit VIII(A)**

B. Vendor will be responsible for, properly installing setting up the Equipment, for properly maintaining the Equipment while it is in Vendor's possession, and for making such of its employees as will be operating the Equipment available for training by Company. This Training will be provided in compliance with the Training Program provided by Company, a copy of which is attached hereto as **Exhibit VIII(B).** Any assistance over and above this initial training will be at Vendor's cost, unless otherwise agreed to in writing by Company.

C, It is agreed that during the term of the Agreement Vendor will manufacture the Products as ordered by Company from time to time. Such Products shall be produced at Vendor's production facilities located in the Netherlands. All such Products shall meet the specifications set forth in Exhibit A attached hereto and made a part hereof. Vendor shall not make any changes to the formulations or significant changes to the method of manufacturing without at least thirty days prior notice to Company.

4. Raw Materials and Packaging

Company will provide all raw materials (e.g., pigment paste, base resins, etc.) and packaging necessary to permit the orderly manufacturing and shipping of the Products.

5. Title and Risk of Loss

Title to all Products as well as all raw materials and work in progress shall remain in Company. Vendor assumes full responsibility and risk for any loss or damage to the raw materials, work in progress and finished Products while the same are in the possession of Vendor.

6. Inventory and Reports

Vendor shall physically segregate all Products manufactured for Company from all other products stored at Vendor's premises. Vendor shall further keep account and records of the quantities and inventories of the Products and raw materials used in the manufacture on hand. Vendor shall furnish Company with monthly inventory statements which shall include a count of all Products on hand and an account of the Products produced and shipped since the immediately preceding report. Vendor shall also answer normal requests from Company's customer service relating to inventory and manufacturing schedules.

7. Packaging and Shipment

The Products will be shipped by Vendor to such locations specified by Company. Vendor shall give Company shipping and packing instructions in time to permit Vendor to arrange for the orderly shipping. Should Vendor be unable to ship as Company requested by, Vendor shall immediately notify Company and Vendor will endeavor to ship as soon as practicable to accommodate Company's orders. Freight costs of shipping the Products shall be separately listed on Vendor's calculation sheet, and paid by Company in accordance with Paragraph 10.

8. Price and Payment

Vendor's total compensation for all products supplied and services rendered under this Agreement, including but not limited to, receiving and storing raw materials, furnishing other raw materials, providing labor, equipment and utilities, manufacturing the Products,

arranging for shipment, processing paperwork, providing inventory reports, performing quality control analysis and reports, shall be as defined in **Exhibit 8**. Vendor shall invoice Company on a monthly basis, and terms shall be net ____ (_0) days from date of invoice, and shall be paid in Euros. Company may charge interest on late payments at the highest rate permitted by applicable law, but the election to refrain from charging interest on any late payments shall not operate as a waiver.

9. Audit

Vendor shall maintain and preserve, for a period of not less than Vendor (2) years, all written and electronic records of all data and information used to calculate the amount of any invoice for the Products to be provided hereunder based upon the calculation of Vendor's full cost, including, without limitation, receipts showing the source, quantity and price of all expenses incurred by Vendor in producing the Products for Company hereunder as follows:

(i) Vendor shall keep such written and electronic records in accordance with generally accepted accounting principles.

(ii) Company shall have the right to audit the relevant records (e.g., purchase orders, invoices, canceled checks, batch records), upon reasonable notice, and at such reasonable times as the parties may agree to, for a period of twelve (12) months following the end of the calendar year in which the expenses in question were incurred, using an independent firm of certified public accountants selected by Vendor.

iii. The cost of maintaining the records shall be borne by Vendor, while the independent auditors of Vendor will be the responsibility of Company.

10. Warranties & Limitations

Vendor warrants that all Products produced hereunder shall conform to the specifications as set forth in Exhibit A and shall be free from any defects in manufacture or material contamination, and that the same shall be shipped by Vendor free from any liens or encumbrances created as a result of the acts or omissions of Vendor. THE ABOVE WARRANTIES ARE EXPRESSLY IN LIEU OF ANY OTHER EXPRESS OR IMPLIED PRODUCT WARRANTIES, INCLUDING ANY IIMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PURPOSE. VENDOR ASSUMES ALL RISK AND LIABILITY FOR LOSS, DAMAGE OR INJURY TO PERSONS OR PROPERTY OF OTHERS ARISING OUT OF THE USE OR POSSESSION OF THE EQUIPMENT OR ANY MATERIAL SOLD HEREUNDER.

11. Quality Control

During the term of this Agreement, Vendor shall provide Company with the quality control analysis data and batch data sheets on each batch of the Products manufactured by Vendor in accordance with the quality control procedures set forth in Exhibit E.

Vendor will inform Company immediately if difficulties in the production process will cause a delay in the shipment of the product.

12. Independent Contractor

Vendor is an independent contractor and shall use its own discretion and shall have complete and authoritative control over its work and its employees and shall assume all rights, obligations and liabilities applicable to it as an independent contractor, including but not limited to, compliance with all applicable local and federal laws and regulations.

13. Force Majeure

The delay or inability of either party to perform any obligations hereunder when required, if caused by reasons of Force Majeure, as hereinafter defined, shall not constitute a breach or default and shall not subject such party to damage or liability to the other so long as such Force Majeure condition exists. The party affected by Force Majeure shall promptly notify the other party of the existence of such condition, its expected duration, and the extent of the impact of such condition on the affected party's ability to perform its obligations hereunder. Such party shall promptly notify the other when the Force Majeure condition ceases and shall immediately thereafter resume full and complete performance of its contractual obligations. Notwithstanding the foregoing, should the performance of this Agreement be suspended or should it become clear that performance must necessarily be suspended for a period of more than 6 (six) months, then the other Party may terminate it with a 30 (thirty) days prior notice served by recorded delivery letter with acknowledgement of receipt to the Party impeded by the event of *force majeure*.

For the purposes of this Agreement, *force majeure* will include the following: "Acts of God", natural disasters, wars, civil disturbances, enforceable decisions by a competent judicial or official authority and, more generally, all other such events outside the control of the Parties that make it impossible for one of the Parties to comply with its obligations.

Upon occurrence of a Force Majeure condition the party affected thereby must immediately take all reasonable steps to cure such condition at the earliest possible time. Neither party, however, shall be required to resolve a strike, lockout, or other labor disputes in a manner which it unilaterally deems improper and inadvisable.

14. Safety and Health

Vendor recognizes the importance of material and production safety considerations and the need to protect persons and property against unsafe conditions that could occur from the improper use, storage, handling, production or disposal of the raw materials, intermediate products, or the Products. Accordingly, Vendor will furnish information in its possession regarding the product safety aspects of the raw materials, intermediate products, or the Products, including but not limited to Material Safety Data Sheets

15. Term and Termination

A. The term of this Agreement shall have an initial term of one year from the Effective Date of the Agreement, and shall continue thereafter from calendar year to calendar year unless sooner terminated by either Party by: (i) giving the other Party written notice of termination, without cause, at least three (3) months prior to any anniversary thereof, or ii) as otherwise set forth in this Agreement.

Without limiting any other remedies available to the aggrieved Party, this Agreement may be immediately terminated by either Party in writing after one Party notifies the other Party in writing of the occurrence of one of the following events of default: Company or Vendor breaches any of the material provisions of this Agreement, and such breach continues for a period of thirty (30) days after written notice from the other Party.

On termination, any clause (or portions thereof) which by its nature should survive termination, shall survive and continue. To the extent permitted by applicable law, each Party waives and covenants not to sue to enforce any right it may now or hereafter have under any state law nor or hereafter enacted which is contrary to the intent of the Parties as expressed in the preceding sentence.

By example and without limitation, any failure of Vendor to comply with the terms of this Agreement sufficient to justify the cancellation or termination of this Agreement shall be deemed good cause for not renewing this Agreement. Nothing herein shall be deemed an express or implied obligation on the party of Company to renew this Agreement in the absence of an applicable state statute prohibiting or penalizing a failure to renew.

B. Upon receiving such a notice of termination of this Agreement, Vendor shall immediately cease and desist all manufacture, use and sale of the Products, and shall: upon request of Company: a) immediately return all of the Intellectual Property and/or any documents containing such Intellectual Property including any copies thereof, (regardless of form, e.g., written or electronic); and b) return the Equipment to Company.

C. Nothing in this Section shall prevent Company from specifically enforcing the License or any of the terms or conditions thereof by injunction, or from otherwise taking any action to enforce any claim it may have under this Agreement in such manner as

provided by law. Nor shall anything in this Section affect any of the rights or remedies set forth in any other undertaking between Company and Vendor.

16. Inventory at Termination

At the termination or expiration of this Agreement, Company has the option but not the obligation to purchase all inventory of the Products meeting specifications. The parties shall use all reasonable effects to minimize the amount of inventory.

15. Products at Termination

At the termination or expiration of this Agreement, Vendor shall: a) complete or return all work in progress, which is the subject of an order placed by Company in accordance with this Agreement (at Company's election), and b) return all inventory of raw materials, packaging, and the Products in its possession.

18. Inventory Shelf Life

Vendor shall be responsible for all costs associated with the manufacture and disposal of the Products that as manufactured meets applicable specifications but may be out of specification because it has been in inventory too long. It is also Vendor's responsibility to manage its inventory of raw materials.

19. Rework

Vendor shall be responsible for all costs associated with the manufacture and disposal of the Products that as manufactured do not meet applicable specifications or fails to meet applicable specifications because of improper storage or handling. Vendor may rework off spec the Products in accordance with its standard manufacturing procedures.

20. Confidential Information

A. During the term of this Agreement, Company may find it necessary, from time to time, to disclose trade secrets, and/or share confidential and/or proprietary information to Vendor, its employees and/or independent contractors ("Confidential Information"), in order for Vendor to perform its obligations hereunder. During the term of this Agreement and for a period of 10 years after its termination, Vendor will not, without limitation, disclose or use such Confidential Information on Vendor's behalf or on behalf of another any third party without the advance written permission of Company.

B. Vendor will inform each employee or representative to whom Confidential Information may be disclosed of his or her obligations of confidentiality as set forth in this Section and will require agreement of such person or persons to honor such obligations. Vendor will restrict dissemination of Confidential Information to those employees who are directly involved in the manufacture, use or sale of the Products for Company. Upon termination of this Agreement, Vendor shall turn over to Company (1)

all Confidential Information in the possession of, or under the control of Vendor (including Vendor's employees and independent contractors), and (2) all property of Company regardless of whether such property embodies Confidential Information.

C. The requirements of non-use and non-disclosure set forth in the above Section shall not apply to any information or data which:

1. Is in or comes to be in the public domain through no fault of Vendor; or
2. Has been independently provided to Vendor by a third party having a right to do so.

21. Assignment

This Agreement is not assignable or transferable by either party, in whole or in part, without the written consent of the other party, except that either party may assign this Agreement in connection with the sale of all or substantially all of its assets to which this Agreement pertains.

22. Waiver

Waiver by Vendor or Company of any breach of these provisions shall not be construed as a waiver of any other breach.

23. Notices

Any and all notices or other communications given under this Agreement shall be in writing and shell be deemed to have been duly given on the date of delivery, if delivered in person, or if mailed by registered or certified mail, to the party entitled to receive same, at his or its address set forth below:

(i) To Company: ACCA A.S.
Oslo, Norway
Fax No.:
Attention: Managing Director

(ii) To Vendor: ABA B.V.
Amsterdam
The Netherlands
Fax No.: _____
Attention: Managing Director

The parties may designate by notice, as provided in this paragraph, to each other any new address for the purpose of this Agreement.

24. Modification

No waiver or modification of any of the terms or conditions hereof shall be effective unless in writing and signed by both Vendor and Company.

25. Headings

The description phrases in the head of the various paragraphs hereof are inserted only as a matter of convenience and for reference, and in no way are intended to define, limit or describe the scope or intent of the particular paragraph to which they refer.

26. Noncompete.

Licensee agrees that during the term of this License Agreement and for a period of six (6) months after its termination, Licensee will not sell the Products or perform services on behalf of any company or business involved in the design, development, production, manufacture, sale, distribution, or marketing of the Products similar in design and function to Company's product range.

27. Alternative Dispute Resolution.

Any dispute, controversy or claim arising out of or in connection with this Agreement, or the breach, termination or invalidity thereof, and which are not capable of being first resolved between the parties themselves, shall be finally settled by arbitration pursuant to the roles of Conciliation and Arbitration of the International Chamber of Commerce.

The arbitrator that shall be appointed hereunder shall be qualified by education and experience in the subject matter of the submitted dispute. The arbitration decision so reached shall be final and binding on the parties. The arbitrator will give full force and effect to the clear intent of the parties as expressed in the terms and conditions of this Agreement. The place of arbitration shall be Rotterdam, the Netherlands The language to be used in the arbitral proceedings shall be English. The arbitrator may allow discovery, but shall set specific limits on the time for and scope of discovery in accordance with the law of the Netherlands. Judgment upon the award of the arbitrator shall be binding and may be entered in and enforced by any court having jurisdiction thereof. Each party shall pay its own costs and attorneys fees. The cost of the arbitration shall be shared equally by both parties. In the event that either party requires injunctive relief, then the applicable court in Rotterdam, the Netherlands shall be the appropriate forum for the resolution of such equitable claims.

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28. Governing Law

The substantive laws of the Netherlands shall be applicable to this Agreement and any disputes arising there out of, as well as and including the UN Convention on Contracts for the International Sale of Goods (CISG).

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the day and year first above written.

WITNESS: **ACCA A.S.**

_____ By:_____

Title:_____

Date:_____

WITNESS: **ABA B.V.**

_____ By:_____

Title:_____

Date:_____

NonProfit Government Contractor
Source Code License Agreement

Between: User Company, Inc. ("Licensee")
(Street Address)
(City, State, Zip)
and
LICENSOR CORPORATION ("LICENSOR"), with corporate offices at
_____.

Recitals

LICENSOR has developed and is the owner of Software entitled WHIZBANG (the "Software");

Licensee wishes to obtain a license to the Software from LICENSOR for the purposes set forth herein and LICENSOR wishes to grant such a license, all on the terms and conditions set forth below.

Agreement

LICENSOR and Licensee hereby agree as follows:

1. Definitions

1.1 "Software" shall mean the computer program(s) on software media in programmer form ("object code") and user oriented symbolic form ("source code") specified on Schedule A to this Agreement.

1.2 "Documentation" shall mean all printed, typewritten, electronic or other material supplied with the Software that is not capable of being interpreted or executed, or of being assembled or compiled and executed, by a computer processor, including without limitation, installation and use instructions, operating environment requirements, user manuals, programmers' guides and system guides. "Restricted Documentation" shall mean Documentation designated as such by LICENSOR, as to which disclosure or dissemination to persons other than Licensee are restricted as specified on Schedule B to this Agreement.

1.3 "Derivative Works" shall mean all modifications, enhancements, improvements, updates and derivative works of the Software made by Licensee pursuant to Section 3(a).

1.4 "Licensed Materials" shall mean the Software, the Source Code and the Documentation.

2. Delivery of Licensed Materials

LICENSOR shall be provide Licensee with one copy of the Software, one copy of the Source Code and with one copy of the Documentation related thereto within ten (10) business days of execution of this Agreement.

3. License Grant

Subject to Licensee's compliance with all of the terms and conditions of this Agreement, LICENSOR hereby grants to Licensee, subject to the terms and conditions of this License, non-transferable, non-exclusive, right and license to use, make and sell WHIZBANG within the United States only as provided below. Any other use of WHIZBANG or any Derivative Work by Licensee shall only be under the terms of a separate license agreement from LICENSOR.

Licensee shall have the following rights and be subject to the following restrictions with respect to Licensed Materials:

(a) Licensee may modify the Software and merge or combine the Software or any part thereof into or with other computer program material to form an updated or Derivative Work;

(b) Licensee may copy the Software to the extent reasonably necessary to exercise the rights granted by (a) above and, for Derivative Works, to the extent reasonably necessary to allow use and distribution

of the Derivative Work as provided in this Section 3, but each copy of the foregoing, or of any part thereof, shall contain the same copyright and other proprietary notices as appear on the Software as delivered to Licensee;

(c) Licensee may copy Restricted Documentation to the extent reasonably necessary to allow the modification of the Software as provided in (a) above;

(d) Licensee may sublicense or transfer the Software incorporated into any Derivative Work created under (a) above, subject to the terms and conditions of this Agreement.

(e) The Licensee may use Documentation solely to the extent reasonably necessary to allow use of the Derivative Work as provided above, but may not copy Documentation without LICENSOR's prior written permission.

(f) Notwithstanding the definition in Section _____, above, the license granted Licensee in subparagraphs b & d, above, shall not include the Source Code for the Software in whole or in part.

4. License Fees

4.1 In consideration of the rights and privileges granted under this license, Licensee hereby agrees to pay to LICENSOR a royalty of ___ percent (_%) of the gross sales price but not less than $___ for each sale of WHIZBANG software, including Derivative Works, except sales to the U.S. Government per paragraph 4.2 and two thousand five hundred dollars ($2,500) per use on a consulting contract, except contracts with the U.S. Government per paragraph 4.2.

4.2 LICENSEE understands that the Intellectual Property was originally produced for the U.S. Government under various contracts with the U.S. Government, and is subject to the US Federal Acquisition Regulation "Rights in Data General—General" clause at FAR 52.227-14. LICENSEE agrees that it shall not include a charge for the Intellectual Property in any sublicense of the Intellectual Property to the U.S. Government. LICENSEE hereby understands that its charging the U. S. Government any license fee for the Intellectual Property shall be considered a material breach of this Licensing Agreement and shall be grounds for immediate termination notwithstanding the cure provisions of Clause 10.1.

5. Warranties

THE LICENSED MATERIALS ARE PROVIDED TO LICENSEE "AS IS" WITHOUT WARRANTY OF ANY KIND. IN NO EVENT WILL LICENSOR BE LIABLE FOR ANY GENERAL, CONSEQUENTIAL, INDIRECT, INCIDENTAL, EXEMPLARY OR SPECIAL DAMAGES ARISING OUT OF THIS AGREEMENT OR FOR THE USE BY LICENSEE OF THE LICENSED MATERIALS, NO MATTER THE CAUSE OF ACTION, EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

LICENSEE HEREBY INDEMNIFIES, DEFENDS, AND HOLDS HARMLESS LICENSOR, ITS BOARD OF TRUSTEES, OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL LIABILITY FOR DAMAGES TO LICENSEE OR ANY THIRD PARTY WHICH MAY ARISE FROM LICENSEE'S USE OF THE LICENSED MATERIALS, OR ANY THIRD PARTY'S USE OF THE LICENSED MATERIALS AS PROVIDED FOR UNDER THIS LICENSE GRANT. SUCH INDEMNIFICATION SHALL INCLUDE ANY AND ALL DAMAGES, INCLUDING ATTORNEY FEES AND ANY OTHER RELATED COSTS AND EXPENSES. ADDITIONALLY, LICENSOR SHALL NOT BE LIABLE FOR DAMAGES ARISING UNDER ANY USE OF THE LICENSE MATERIALS NOT AUTHORIZED HEREUNDER.

6. Maintenance and Training

LICENSOR shall have no obligation to Licensee to maintain the Software or provide any updates. LICENSOR may provide limited training and support, at LICENSOR's discretion, to enable successful technology transfer. Licensee will pay for training on a Time and Materials basis under a separate contracting agreement. Licensee shall work with LICENSOR to ensure that derivatives remain compatible with LICENSOR versions of WHIZBANG.

7. Proprietary Rights

7.1 Licensed Materials. Licensed Materials, including all copies, translations, compilations, partial copies and copies or partial copies incorporated into modifications and Derivative Works made by Licensee are the property of LICENSOR. Licensee's rights in the Licensed Materials are expressly limited to the rights set forth in this Agreement. No title to the Licensed Materials, or any part thereof, is transferred to Licensee.

7.2 Derivative Works. All Derivative Works (in both source code and object code form) shall be owned by Licensee. Licensee hereby grants LICENSOR a fully paid-up, perpetual, nonexclusive license to use Derivative Works for research purposes and to demonstrate Derivative Works to the Government. Licensee will provide LICENSOR with a copy of each Derivative Work made by it, in both source and object code forms. Licensee will also provide LICENSOR will copies of WHIZBANG data files from procedures that are developed.

8. Confidentiality

Licensee acknowledges and agrees that source code for the Software and Restricted Documentation provided to Licensee pursuant to this Agreement constitute trade secret, proprietary confidential information of LICENSOR. In addition to its obligations under the other provisions of this Agreement, Licensee agrees that it will not use any of such information except during the term of this Agreement in accordance with all of the provisions hereof, and will not disclose any of such information to any third party without the prior written consent in each case of LICENSOR. LICENSOR hereby consents to the disclosure of such information to such of Licensee's employees as to whom such disclosure is reasonably necessary in order to serve Licensee directly in the exercise of the licenses granted by this Agreement, provided that each such employee agrees in writing to comply with all of the confidentiality, use and copying restrictions of Licensee hereunder. Licensee agrees that violation of this Section 8 would result in irreparable harm to LICENSOR for which damages would be inadequate, and that LICENSOR will have the right to seek injunctive relief for any threatened or actual violation of this Section 8, without the necessity of posting a bond. The provisions of this Section 8 will not apply to any information to the extent, and only to the extent, that: (a) Licensee can establish by documentary evidence that such information was in its possession prior to disclosure by LICENSOR; (b) Licensee can establish that such information was generally known in the computer programming field in integrated form prior to disclosure by LICENSOR, or becomes so known otherwise than by breach by a party under an obligation of confidentiality to LICENSOR with respect to such information; or (c) Licensee can establish by documentary evidence that such information was disclosed to it by a third party not under an obligation to LICENSOR not to disclose such information. The provisions of this Section 8 shall survive termination of this Agreement for a period of five (5) years.

9. Termination Provisions

9.1 In the event that Licensee fails to comply with any provisions of this License Agreement, or any other agreement the Licensee may have with LICENSOR, LICENSOR may give written notice of such noncompliance. Licensee shall have thirty (30) days after receipt of such notice to remedy such noncompliance. If the default is not cured within such period, LICENSOR may terminate this Agreement effective immediately.

9.2 Upon termination or expiration of this Agreement for any reason, all licenses and rights of Licensee under Section 2 shall immediately terminate and the source code and object code (including all copies) of each Software Product and Derivative Work shall be immediately returned to LICENSOR.

10. Nonsolicitation

Licensee shall not solicit for employment any employee of LICENSOR in any manner associated or familiar with the subject matter of this license. For purposes of this paragraph, the term “solicit for employment” shall include, but not be limited to, enticing any said employee of LICENSOR to terminate his or her relationship with LICENSOR. The foregoing restrictions shall apply and continue for a period of three (3) years from the effective date of this Agreement.

11. General

11.1 Non-Waiver. Failure of either party to assert any of its rights on any one occasion under this Agreement shall in no way be construed as a waiver of such rights on any other occasion nor shall a waiver of any right of either party constitute or be deemed a waiver of any other right.

11.2 Amendment. The terms of this Agreement may only be amended by a written instrument signed on behalf of both parties.

11.3 Severability. If any provision of this Agreement shall be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby.

11.4 Governing Law. The terms of this Agreement shall be governed by the laws of The Commonwealth of Virginia without regard to Virginia conflicts of laws rules, and Licensee agrees to the exclusive jurisdiction of the Virginia courts.

11.5 Assignment. Neither party may assign its rights hereunder without the prior written consent of the other party. Any attempt to assign any rights, duties, or obligations arising out of this Agreement without such prior written consent shall be considered void. Notwithstanding the provisions of Section 9.1, above, LICENSOR may terminate this Agreement and any licenses granted under this Agreement by notice to the Licensee effective on the date such notice is given if the Licensee assigns this Agreement or any of its rights hereunder without the prior written consent of LICENSOR.

11.6 Export. Licensee understands that any export of the Licensed Materials may require an export license and Licensee assumes full responsibility for obtaining such license. Licensee must obtain LICENSOR's prior written consent before exporting the Software Product(s).

11.7 Notices. All notices, requests, demands, other communications under this Agreement shall be in writing, shall be in English, and shall be deemed to have been duly given when delivered in person or, if mailed, when mailed by certified or registered mail, postage prepaid, return receipt requested, to the parties at the addresses set forth below or at such other address as may be given in writing by either party to the other in accordance with this section.

If to LICENSOR:

THE LICENSOR CORPORATION
(Street)
(City, State, Zip)
Attn: Technology Transfer Office

If to the Licensee:

USER Inc.
(Street)
(City, State, Zip)
Attn:

11.8 Entire Agreement. This Agreement together with any Schedules and Exhibits attached hereto constitutes the entire understanding between the parties relating to the subject matter of this Agreement and supersedes all prior writings, negotiations, or understandings with the respect thereto.

11.9 Counterparts. This Agreement and any amendments to this Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement or amendment, as the case may be.

11.10 Headings. The headings used in this Agreement are included for reference only and shall not affect the meaning or interpretation of this Agreement.

11.11 Publicity. Licensee shall, in all documentation, advertising, web sites, presentations or other public releases about any products or applications that contain or use the Intellectual Property, identify LICENSOR as the creator of WHIZBANG. Licensee shall do so by placing the "LICENSOR Technology Applied" logo and the following or similar acknowledgement: "This system incorporates elements of WHIZBANG that was developed by LICENSOR Corporation on the behalf of the Federal Government Dept." LICENSOR is a registered trademark of LICENSOR Corporation. Licensee shall not use the names of LICENSOR Corporation, LICENSOR, nor any adaptation thereof except as described above, without the prior written consent of LICENSOR.

IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THIS AGREEMENT.

_____	LICENSOR CORPORATION
"Licensee"	
By: _____	By: _____
Name: _____	Name: _____
Date: _____	Date: _____

Schedule A

Software Products

Schedule B

Restricted Documentation

Examples of Force Majeure Provisions

1. Force Majeure. Manufacturer shall not be liable for any failure to perform its obligation hereunder resulting from any cause beyond its reasonable control, including, without limitation, any act of God, fire, flood, earthquake, strike, lockout, factory shutdown or alteration, civil disturbance, insurrection, war, act of civil or military authority, priority request, law, regulation, act or order of any national or local government or any department, agency or representative, weather, accident, act or default of common carrier or wreckage.

2. Neither Party shall be liable for failure of or delay in the performance of its obligations due to any Act of God, accident, fire, flood, storm, riot, war, sabotage, explosion, national defense requirement, government law, ordinance, earthquake, inability to obtain electricity or any other type of energy or any similar event beyond its reasonable control. However, strikes and other labor disputes of The Supplier and its sub-suppliers are specifically excluded. Both Manufacturer and The Supplier shall promptly notify the other Party of any occurrence of any such condition and in the event any such condition precludes either Party from performing its obligations hereunder for more than sixty (60) days, the Party not affected by such condition may terminate this Agreement upon written notice to the other Party.

3. Force Majeure. Neither Seller nor Buyer shall be liable for any default or delay in performance due to any cause beyond its control, including "Acts of God", fire, the elements, strikes or labor disputes, accidents or transportation difficulties, shortages of material or government acts or requirements. The party who fails to perform must give prompt notice to the other Party of the impediment and its effect on its ability to perform under this Agreement. A Party shall be obliged to take such measures as the other Party reasonably requests to minimize the consequences of the impediment, and continue to operate to the extent that such "Acts of God" do not affect that party's performance.

4. The consequences, direct or indirect, of acts of God, fires, accidents, floods, war, riot, civil commotion, labor troubles, shortage of transportation, delays of subcontractors or suppliers, failure, suspension or curtailment of production due to shortage of supply of materials, or economic factors, government acts or requirements and any and all like or different causes beyond the control of that party shall excuse that party’s performance. However, to the extent that that such party is not affected by such events, it shall continue to operate during the term of such event in accordance with the terms of the Agreement. A party asserting an excusable delay by reason of any of the Force Majeure causes hereinabove set forth shall give written notice to the other Party within thirty (30) days of the occurrence of the cause which gives the Party a right to delay performance hereunder. Notwithstanding the foregoing, if an event of Force Majeure shall occur and be continuing for a period of at least one hundred twenty (120) calendar days or more, the party not affected by the event of Force Majeure may terminate this agreement at its sole election upon written notice to the other party. Seller shall allocate capacity to produce product for Buyer on a ratable basis in proportion to Buyer’s purchases of product over the course of the previous consecutive12 month period.

5. The occurrence of an event of Force Majeure that results in the application of this paragraph shall be communicated in writing by the party seeking the protection of this paragraph to the other party. In such case, both Supplier and Buyer will be excused from the obligation (except for any due payment obligation) of this Agreement to the extent that performance is delayed or prevented by any circumstances beyond their reasonable control including but not limited to floods, wars, fire, explosion, sabotage, accidents, strikes or other labor disputes, plant shutdown, or compliance with any law, regulation or request of any governmental authority. The occurrence of an event of Force Majeure shall suspend the obligation to perform and either party may suspend performance of its obligations to the other subject to the delay. Notwithstanding the foregoing, if an event of Force Majeure shall occur and be continuing for a period of at least one hundred twenty (120) calendar days or more, the party not affected by the event of Force Majeure may terminate this agreement at its sole election upon written notice to the other party. The duty of ASD to pay for conforming product received is never suspended. Manufacturer would allocate capacity to produce product for AS on a ratable basis in proportion to AS' purchases of product over the course of the previous consecutive12 month period.

6. The delay or inability of either party to perform any obligations hereunder when required, if caused by reasons of Force Majeure, as hereinafter defined, shall not constitute a breach or default and shall not subject such party to damage or liability to the other so long as such Force Majeure condition exists. The party affected by Force Majeure shall promptly notify the other party of the existence of such condition, its expected duration, and the extent of the impact of such condition on the affected party's ability to perform its obligations hereunder. Such party shall promptly notify the other when the Force Majeure condition ceases and shall immediately thereafter resume full and complete performance of its contractual obligations. Notwithstanding the foregoing, should the performance of this Agreement be suspended or should it become clear that performance must necessarily be suspended for a period of more than 6 (six) months, then the other Party may terminate it with a 30 (thirty) days prior notice served by recorded delivery letter with acknowledgement of receipt to the Party impeded by the event of *force majeure*.

For the purposes of this Agreement, *force majeure* will include the following: "Acts of God", natural disasters, wars, civil disturbances, enforceable decisions by a competent judicial or official authority and, more generally, all other such events outside the control of the Parties that make it impossible for one of the Parties to comply with its obligations.

Upon occurrence of a Force Majeure condition the party affected thereby must immediately take all reasonable steps to cure such condition at the earliest possible time. Neither party, however, shall be required to resolve a strike, lockout, or other labor disputes in a manner which it unilaterally deems improper and inadvisable.

7. Neither party shall be liable for delay in performance or nonperformance caused, directly or indirectly, and in whole or in part, by *force majeure*. In the event of such a circumstance, Reichhold shall use its best efforts to allocate supplies, in excess of its own needs, proportionately among its customers in such a manner as shall be determined by Reichhold in its discretion to be practicable. Nothing herein shall excuse Distributor of its liability to pay for Products shipped to or on behalf of Distributor.

For the purposes of this contract, *force majeure* will include the following: natural disasters, wars, civil disturbances, enforceable decisions by a competent judicial or official authority

and, more generally, all other events outside the control of the Parties that make it impossible for one of the Parties to comply with its obligations. However, should the performance of this contract be suspended or should it become clear that performance must necessarily be suspended for a period of more than 6 (six) months, the other Party may terminate it with a 30 (thirty) days prior notice served by recorded delivery letter with acknowledgement of receipt to the Party impeded by the event of *force majeure*.

Examples of Confidential Information Provisions

1. Confidential Information

A. During the term of this Agreement, Manufacturer may find it necessary, from time to time, to disclose trade secrets, and/or share confidential and/or proprietary information to Supplier, its employees and/or independent contractors ("Confidential Information"), in order for Supplier to perform its obligations hereunder. During the term of this Agreement and for a period of 10 years after its termination, Supplier will not, without limitation, disclose or use such Confidential Information on Suppliers behalf or on behalf of another any third party without the advance written permission of Manufacturer.

Supplier will inform each employee or representative to whom Confidential Information may be disclosed of his or her obligations of confidentiality as set forth in this Section and will require agreement of such person or persons to honor such obligations. Supplier will restrict dissemination of Confidential Information to those employees who are directly involved in the manufacture, use or sale of the Products for Manufacturer. Upon termination of this Agreement, Supplier shall turn over to Manufacturer (1) all Confidential Information in the possession of, or under the control of Supplier (including Supplier's employees and independent contractors), and (2) all property of Manufacturer regardless of whether such property embodies Confidential Information.

The requirements of non-use and non-disclosure set forth in the above Section shall not apply to any information or data which:

1. Is in or comes to be in the public domain through no fault of Supplier; or
2. Has been independently provided to Supplier by a third party having a right to do so.

2. Confidentiality (Unilateral) (Discloser)

A. Where possible, COMPANY will identify any COMPANY proprietary/confidential information disclosed hereunder with an appropriate, conspicuous legend ("Proprietary" or "Company-Confidential"). All other nontangible disclosures (discussions, briefings, etc.) identified as proprietary or company-confidential at the time of disclosure shall be summarized in writing, identified with a legend as described above, and forwarded to Recipient within thirty

(30) days of disclosure. Recipient's duty to protect such information shall commence from initial disclosure.

B. Recipient shall hold COMPANY proprietary/ confidential information in strict confidence and shall use such information only for the purpose described above. Recipient shall protect COMPANY's proprietary/confidential information with at least the same degree of care that it protects its own proprietary/company-confidential information but in not less than a reasonable degree of care and limit distribution of COMPANY proprietary/ confidential information only to those individuals within its organization who have a need to know such information in order to accomplish the purpose defined above. Recipient's obligations under this paragraph shall continue for a period of three (3) years from receipt of COMPANY proprietary/confidential information.

C. Recipient's obligations under this clause shall not apply to any portion of such information that:

a) is or becomes publicly available, other than through the Recipient's fault or negligence;

b) is already known to Recipient, without restriction, at the time of receipt;

c) is rightfully and lawfully obtained by the Recipient from another party rightfully and lawfully possessing the same without restriction;

d) is independently developed by the Recipient without having had access to the information disclosed hereunder;

e) is obligated to be produced under an order of a court of competent jurisdiction, providing that COMPANY is immediately notified by Recipient; or

f) is disclosed by COMPANY to a third party without a similar restriction on the rights of such third party.

COMMENT: This clause strikes a middle ground between a requirement that information must be marked in order to qualify for confidential treatment and not specifically requiring confidential treatment for unmarked information that recipient knows or should reasonably know is confidential. From a recipient's point of view, an absolute marking requirement is most administrable. The "knows or should reasonably know" standard makes management of information difficult for recipient and gives him greater, and unknown, exposure.

Another way to bound responsibility is to limit the information covered to a given type either by specifying (e.g., technical descriptions and drawings) or by excluding other types (e.g., does not include non-technical information such as marketing and sales information).

The exceptions are sometimes made tighter by adding the requirement of "as demonstrated by competent documentary evidence" to paragraphs b) and d).

The period of confidentiality in paragraph (B) should be arrived at with regard to the "half life" of the subject matter and information involved. Often, confidentiality clauses are

written without a limit on that period, resulting, in effect, in a perpetual obligation/liability for recipient.

3. Confidential Information- Liability
Neither party shall be liable for the inadvertent, accidental, unauthorized or mistaken disclosure or use by its employees of Proprietary Information obtained pursuant to this Agreement provided that (a) the Receiving Party handles Proprietary Information of the Disclosing Party which bears such a notice with the same degree of care normally used to protect its own Proprietary Information within its own organization, but in no event any less than reasonable care; (b) upon discovery of such disclosure or use, all reasonable steps are taken to retrieve the disclosed Proprietary Information and to prevent any further inadvertent, accidental, unauthorized, or mistaken disclosure or use; and (c) such disclosure will not relieve the Receiving Party who disclosed the Proprietary Information from its continuing obligation to adhere to the terms and conditions of this Agreement.

COMMENT: This disclaimer gives specific protection to recipients of proprietary information. Conversely, it is not unusual for disclosers of proprietary information, particularly as related to new IP or products, to attempt to include a broad liability, even to the point of consequential damages, for breach of confidentiality.

Example of Noncompete.

Licensee agrees that during the term of this License Agreement and for a period of six (6) months after its termination, Licensee will not sell Gelcoat Products or perform services on behalf of any company or business involved in the design, development, production, manufacture, sale, distribution, or marketing of Gelcoat Products similar in design and function to Manufacturer's product range.

Examples of Warranty Language and Indemnification/Limitation Of Liability

1. Distributor hereby acknowledges and understands that MANUFACTURE's STANDARD WARRANTY IN REGARD TO ANY PRODUCTS SOLD HEREUNDER SHALL APPLY TO THE SALES OF ALL PRODUCTS, AND THAT SUCH PRODUCTS SHALL CONFORM TO MANUFACTURER'S WRITTEN SPECIFICATIONS IN EFFECT AT THE TIME OF SHIPMENT FROM MANUFACTURER. THIS WARRANTY IS EXPRESSLY IN LIEU OF ANY OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PURPOSE, AND OF ANY OTHER OBLIGATION ON THE PART OF MANUFACTURER. UNDER NO CIRCUMSTANCES SHALL MANUFACTURE BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES. No warranty, express or implied, concerning the application or the results to be

obtained with Manufacturer's Products will be made by Distributor except with the express prior written authorization of Manufacturer in each specific instance, and Manufacturer shall not be liable for any representation by Distributor without such prior authorization.

Accordingly, Manufacturer will indemnify the Distributor against all claims arising out of a defect in the material and/or manufacturing of the Products. This warranty does not cover damage or loss caused by the Distributor as a result of incorrect storage or treatment or inappropriate use, particularly non-compliance with the stipulations of the technical manuals supplied by Manufacturer, or damage or loss caused during transportation of the Products. In this respect, the Distributor undertakes to pass on to its customers all technical documentation concerning the Products provided to it by Manufacturer, otherwise it will be held liable.

All other legal and contractual warranties concerning the Products are expressly excluded.

The carrier must be informed of any apparent defects in the Products delivered by Manufacturer or non-compliance with the order according to the timescales and conditions stated in the General Conditions of Sale. Manufacturer must be notified in writing of any hidden defects within three (3) months of delivery of the goods, according to the details given in the technical manuals accompanying the Products. This notification must be accompanied by Product samples, which will be submitted for inspection by the laboratories designated by Manufacturer. On the basis of this inspection, the laboratories will indicate whether the alleged defect is proven and whether it is covered by the above-mentioned guarantee. If this procedure is not followed, the Distributor will be presumed to have abandoned all claims, whether the above-mentioned inspection has taken place or not, and Manufacturer will not be obliged to pay any compensation.

Subject to observance of the above, if the Product defect is covered by the above-mentioned guarantee, Manufacturer will reimburse the defective Products or replace them free of charge, including carriage expenses. However, Manufacturer will not be obliged to compensate for the other prejudicial consequences of Product defects, except in the case of an imperative statutory provision to the contrary. Moreover, Manufacturer's contractual liability for any direct or indirect prejudice caused by the Products will be limited to the value of the delivered goods irrespective of the circumstances.

2. The Products, at delivery and during the specified shelf-life of the Products, shall be free from defects in material and manufacture, and will comply with the requirements set forth in Purchaser's Purchasing Specification (ref. Exhibit B) and with the requirements set forth in the Vendor's Specification for the Products (ref. Exhibit B). Prior to entering into this Agreement, Purchaser has provided to the Vendor the details on how the Products are to be used in the production of rotor blades for wind turbines as marketed by LM.

TO THE EXTENT PERMITTED BY LAW, VENDOR DOES NOT MAKE ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AS TO ANY PRODUCT, WHETHER OR NOT THAT PRODUCT IS COVERED BY ANY EXPRESS WARRANTY CONTAINED HEREIN.

This warranty does not cover any product which may have been damaged in transit or has been subject to misuse, neglect, or accident; or has been used in violation of the Vendor's instructions, nor extend to any units that may have a limited shelf life or may deteriorate through age or other factors such as improper storage, such limited life or deterioration is not, in and of itself, a defect in either material or workmanship, nor will it be deemed to be a failure to conform to specifications. **THERE ARE NO OTHER WARRANTIES THAN THOSE EXPRESSLY STATED HEREIN.**

Purchaser's Specifications may be updated and/or revised from time to time, but will only become effective and subject to this warranty after they have been provided to and accepted by the Vendor in writing. These proposed Specifications will be provided by Purchaser's _____ to the Director of _____ for the Vendor, who will then be responsible for circulating them within Vendor's organization for review and acceptance and for then responding to Purchaser.

3. (Limitation of liability) Vendor shall not be liable for: a) incidental, special, or consequential damages, expenses, or lost profits that may arise out of Vendor's failure to perform its contractual obligations, or b) for any claims resulting from contracts between Purchaser and its customers and suppliers, unless specifically agreed otherwise in this Agreement. In addition, the total loss and/or damages that Vendor can be responsible for during any calendar year during the term of this Agreement cannot exceed X% of the total sales by Vendor to Purchaser during the preceding Calendar year. Notwithstanding the foregoing, this provision does not apply to Products Liability claims (Sec. __) or costs arising out of any authorized Product Recalls (Sec. __).

4. The Manufacturer shall indemnify, defend and hold harmless the Customer from and against any and all claims, liabilities, penalties, fines, demands, suits or causes of action by parties who are not affiliated with the Customer (collectively, "Third Party Claims"), including reasonable attorneys' fees and out-of-pocket costs and expenses incurred in connection with any such Third Party Claim, which may at any time be imposed upon, incurred by or assert or awarded against the Customer as a result of any failure by the Manufacturer or any Qualified Contractor performing Covered Services hereunder at the request or direction of the Provider to perform Covered Services in any manner other than as provided in Section 3 hereof; provided, that the Provider's liability for any claim hereunder shall be limited as provided in the Section below, and notwithstanding anything else herein, the Provider's liability for all Third Party Claims that occur in each Calendar year shall not exceed two times the amount payable by Customer in the same twelve month period (or if shorter the total number of months elapsed in the applicable rider or riders) for the Products (as set forth on the rider or riders hereto) in aggregate by the Customer; provided further, that the Provider shall not be liable for any Claim to the extent it results solely from the Customer's negligent acts or omissions.

The parties hereto agree that the Manufacturer shall not be liable to the Customer for, and the Customer specifically disclaims any claim (including, without limitation, any claim arising from a third party claim on or against the Customer) for, indirect, special, punitive or consequential damages, including without limitation lost profits.

5. Warranties and Indemnification (Infringement) (Licensor)

A. LICENSOR hereby represents and warrants that: (i) LICENSOR has the authority to grant to Licensee all of the rights granted hereunder; (ii) LICENSOR owns or controls all rights to the Licensed Patent; and (iii) LICENSOR is unaware of any rights superior to LICENSOR's in the Software.

B. LICENSOR shall, at its expense, defend or settle any claim, action or allegation brought against Licensee that the Software infringes any patent, copyright, trade secret or other proprietary right of any third party and shall pay any final judgments awarded or settlements entered into, provided that Licensee gives prompt written notice to LICENSOR of any such claim, action or allegation of infringement and gives LICENSOR the authority to proceed as contemplated herein. In the event any such infringement, claim, action or allegation is brought or threatened, LICENSOR may, at its sole option and expense:

i) procure for Licensee the right to continue Use of the Licensed Patent or infringing part thereof;

ii) modify or amend the Software or infringing part thereof, or replace the Software or infringing part thereof with other software having substantially the same or better capabilities; or

iii) if neither of the foregoing alternatives is, in LICENSOR’s sole judgment, available to LICENSOR, terminate Licensee's rights and licenses to the Licensed Patent under this Agreement and refund to Licensee all amounts paid by Licensee to LICENSOR depreciated on a five year straight line basis.

C. The foregoing obligations shall not apply to the extent the infringement arises as a result of modifications to the Software or the combination of the Software with other works.

D. Licensee shall take all reasonably appropriate and necessary action to assist LICENSOR in the defense of such infringement action.

E. The failure of Licensee to give notice in the manner provided herein shall not alleviate LICENSOR of its obligations under this Section, except to the extent that such a failure has materially prejudiced LICENSOR's ability to defend the claim.

F. The foregoing states the entire liability of and warranty by LICENSOR for intellectual property infringement by the Licensed Patent.

COMMENT: This is a “plain vanilla” infringement warranty clause, with the exception of “Licensor’s sole judgment” in B.iii). A more common form is to substitute “reasonably” for that phrase. When combined with a blanket disclaimer of warranties it closely limits licensor’s risk. From licensor’s point of view, it is basically an affirmation of good faith. However, licensee may deem this insufficient depending on the importance of the licensed IP to licensee’s efforts and how much licensee will invest in using the licensed IP or in marketing products incorporating the licensed IP.

6. As Is Clause/ Limitation of Liability (Licensor)

A. The Software is provided to Licensee "AS IS". LICENSEE ASSUMES TOTAL RESPONSIBILITY AND RISK FOR LICENSEE's USE OF IT INCLUDING THE RISK OF ANY DEFECTS OR INACCURACIES THEREIN. LICENSOR DOES NOT MAKE, AND EXPRESSLY DISCLAIMS, ANY EXPRESS OR IMPLIED WARRANTIES OF ANY KIND WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WARRANTIES OF TITLE OR NON-INFRINGEMENT OF ANY IP OR TRADEMARK RIGHTS, ANY WARRANTIES ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE, ANY WARRANTY THAT THE SOFTWARE WILL RUN PROPERLY ON LICENSEE's EQUIPMENT AND WILL NOT CAUSE DAMAGE TO LICENSEE's EQUIPMENT OR DATA, AND ANY WARRANTY THAT THE SOFTWARE IS "ERROR FREE" OR WILL MEET LICENSEE'S REQUIREMENTS.

B. IN NO EVENT SHALL LICENSOR BE LIABLE FOR (a) ANY SPECIAL INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, BUSINESS INTERRUPTION, LOSS OF PROGRAMS OR INFORMATION, AND THE LIKE) ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE, EVEN IF LICENSOR OR ANY OF ITS AUTHORIZED REPRESENTATIVES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, (b) ANY CLAIM ATTRIBUTABLE TO ERRORS, OMISSIONS, OR OTHER INACCURACIES IN THE SOFTWARE, OR (c) ANY CLAIM BY ANY THIRD PARTY.

C. BECAUSE SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATIONS MAY NOT APPLY TO LICENSEE. IN THE EVENT THAT APPLICABLE LAW DOES NOT ALLOW THE COMPLETE EXCLUSION OR LIMITATION OF LIABILITY OF CLAIMS AND DAMAGES AS SET FORTH IN THIS AGREEMENT, LICENSOR'S LIABILITY IS LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW.

COMMENT: Clearly a Licensor's clause, this is a total disclaimer of any and all warranties and liability with a fall-back in para. C.

Dispute Resolution and Choice of Law Provisions

1. DISPUTE RESOLUTION (Licensee)
This Agreement will be governed by and interpreted in accordance with the laws of the State of _____ without regard to _____ conflicts of laws rules. Any dispute or disagreement between the parties arising out of or relating to this Agreement shall be settled by

suit in the federal courts of _____. Both the Licensor and the Licensee submit to personal jurisdiction of federal courts of _____.

COMMENT: Licensors often specify the law and courts of their home state. Licensee may not have much negotiating leverage in this area, but confining jurisdiction to federal courts in the state gives a measure of predictability.

2. Dispute Resolution (Winner take all)
In the event of litigation between the parties arising under or relating to this Agreement, the prevailing party shall be paid its attorney's fees and costs by the losing party. The term "Prevailing Party" shall include, without limitation, one who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other party of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be in an amount to fully reimburse all attorneys' fees reasonably incurred in good faith.

3. Arbitration.

Any controversy or claim arising out of or relating to this Agreement or the breach thereof will be settled by arbitration before three (3) arbitrators in accordance with the Rules of the American Arbitration Association ("AAA") then in effect, and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction. Any such arbitration will be conducted in the location of the party against whom arbitration is filed. The arbitrators will be selected from a panel of persons having experience with and knowledge of electronic computers and the computer business, and at least one of the arbitrators will be an attorney. The arbitrators will have no authority to award punitive damages nor any other damages not measured by the prevailing party's actual damages, and may not, in any event, make any ruling, finding or award that does not conform to the terms and conditions of this Agreement. Either party, before or during any arbitration, may apply to a court having jurisdiction for a temporary restraining order or preliminary injunction where such relief is necessary to protect its interests pending completion of the arbitration proceedings. Arbitration will not be required for actions for recovery of specific property, such as actions for replevin. Neither party nor the arbitrators may disclose the existence or results of any arbitration hereunder without the prior written consent of both parties. Prior to initiation of arbitration or any other form of legal or equitable proceeding, the aggrieved party will give the other party written notice describing the claim and amount as to which it intends to initiate action.

COMMENT: While short, this clause is quite specific on the dispute resolution process. The specification of the technical background of the arbitrators may be very useful in license agreements for specific high technology areas such as software.

3. Governing Law: This Agreement shall be construed, governed, interpreted, and applied in accordance with the laws of the Commonwealth of Virginia, USA, without regard to Virginia conflicts of laws rules, except that questions affecting the construction and effect of any patent shall be determined by the law of the country in which the patent was granted.

COMMENT: Many times parties ignore the effect of the choice of law on the IP that is the subject of the agreement.

4. Arbitration of Royalty

(a) Exclusive Remedy. If the parties are unable to reach agreement on the royalty for commercial use of an invention pursuant to Section [insert sec.#] the royalty shall be settled by submission to final, binding and non-appealable arbitration ("Arbitration") in accordance with the Rules of the American Arbitration Association (the "Association"), as then in effect, except as varied or excluded by this Agreement, without any right by any party to a trial *de novo* in a court of competent jurisdiction.

(b) Place of Arbitration. The Arbitration shall be conducted in _____.

(c) Costs and Fees. Each party shall, except as otherwise provided herein, be responsible for its own expenses, including legal fees, incurred in the course of any arbitration proceedings. The fees of the arbitrators shall be divided evenly between the parties.

(d) Procedure. The parties shall follow the procedures described below:

(i) The party seeking Arbitration (the "Demanding Party") shall give notice of a demand to arbitrate (herein referred to as the "Demand") to the other party (the "Non-Demanding Party") and to the Association. The Demand shall include (A) a statement of the dispute, (B) copies (if any) of all supporting documentation in the possession of the Demanding Party, (C) a copy of this Section, and (D) the name of the arbitrator selected by the Demanding Party.

(ii) Within thirty (30) days after receipt of the Demand, the Non-Demanding Party shall give notice (herein referred to as the "Response") to the Demanding Party and to the Association, of (A) its answer and defenses to the issues raised by the Demanding Party, (B) copies (if any) of all supporting documentation in the possession of the Non-Demanding Party, and (C) the name of the arbitrator selected by the Non-Demanding Party.

(iii) The two arbitrators selected by the parties shall select a third arbitrator, who shall be experienced in licensing and royalty valuation. None of the arbitrators shall have any existing or prior relationship with either party.

(iv) The three arbitrators (the "Tribunal") shall proceed with the Arbitration by giving notice to all parties of its proceedings and hearings in accordance with the Association's applicable procedures (the "Association's Rules"). Within fifteen (15) days after the third arbitrator has been appointed, an initial meeting among the Tribunal and counsel for the parties shall be held for the purpose of establishing a plan for administration of the Arbitration, including: (A) schedule and place of hearings; and (B) any other matters that may promote the efficient, expeditious and cost-effective conduct of the proceedings. The substantive law of the

State of _____ and the United States law applicable to patents, trademarks, and copyrights (excluding that body of law applicable to choice of law and excluding the United Nations Convention on Contracts for the International Sale of Goods) shall be applied by the Tribunal to the resolution of the dispute. The hearings shall commence within thirty (30) days of the initial meeting and shall be concluded within ninety (90) days of the initial meeting. The Tribunal shall not be bound to make specific findings of fact and reach conclusions of law, and shall issue a decision within ten (10) days of the conclusion of the arbitration hearings.

(e) Injunctive Relief. Notwithstanding the foregoing, the parties specifically reserve the right to seek a temporary judicial restraining order, preliminary or permanent injunction, or other similar equitable relief with respect to (i) any failure by the Tribunal or any parties to comply with the provisions of this Article or (ii) to preserve the status quo or prevent irreparable harm.

COMMENT: The tight time limits and explicit procedure make this provision virtually self-executing, a virtue when the parties are locked in a disagreement on a sensitive topic: money. It would work equally well as a general arbitration provision, *mutatis mutandis* for paragraphs (a) and (d)(iii).

5. Dispute Resolution

If a controversy should arise out of or relating to this Agreement, then not later than one (1) year after the event that is the subject of the controversy, either party may serve on the other a written notice specifying the existence of such controversy and setting forth in reasonably specific detail the grounds thereof ("Notice of Controversy"). The party served shall have thirty (30) days after receipt of the Notice of Controversy to serve any notice of counterclaim ("Notice of Counterclaim"), which shall also specify the claim or claims in reasonably specific detail.

Following receipt of the Notice of Claim or Notice of Counterclaim there shall be a three (3) week period during which the parties shall make a good faith effort to resolve the dispute ("Period of Negotiation"). Neither party shall take any action to initiate arbitration proceedings during the Period of Negotiation.

Either party may serve a notice of intention to arbitrate ("Notice of Arbitration") up to thirty (30) days after the expiration of the Period of Negotiation.

The arbitration shall be governed by the Rules for Resolution of Commercial Disputes of the American Arbitration Association ("AAA") in effect on the date of the Notice of Controversy, except the terms of this Arbitration/Dispute Resolution provision shall govern shall govern in the event of any difference or conflict between such rules and this provision.

[Consider circumscribing AAA discovery rules]

An award shall be rendered within thirty (30) days of the close of the arbitration hearing and at the latest within ____ months of the date of the Notice of Arbitration. The award shall set forth

the grounds for the decision (findings of fact and conclusions of law) in reasonably specific detail.

The award shall be final and nonappealable except as provided in the AAA rules and except that a court of competent jurisdiction shall have the power to review whether, as a matter of law, based on the finding of fact by the arbitrator, the award should be confirmed, modified or vacated. Such judicial review shall be final and binding on the parties.

COMMENT: This clause has its own "statute of limitations", which allows for a winding up of matters under the agreement. The negotiation provision in the second paragraph is similar to mandatory conciliation requirements in some courts. But it may be preferable to have escalation of disagreements to higher management precede the decision process involved in initiating the arbitration process. Positions tend to have hardened in the run-up to initiating formal dispute resolution.

CONFIDENTIALITY

Confidentiality (Unilateral) (Discloser)

A. Where possible, COMPANY will identify any COMPANY proprietary/confidential information disclosed hereunder with an appropriate, conspicuous legend ("Proprietary" or "Company-Confidential"). All other nontangible disclosures (discussions, briefings, etc.) identified as proprietary or company-confidential at the time of disclosure shall be summarized in writing, identified with a legend as described above, and forwarded to Recipient within thirty (30) days of disclosure. Recipient's duty to protect such information shall commence from initial disclosure.

B. Recipient shall hold COMPANY proprietary/ confidential information in strict confidence and shall use such information only for the purpose described above. Recipient shall protect COMPANY's proprietary/confidential information with at least the same degree of care that it protects its own proprietary/company-confidential information but in not less than a reasonable degree of care and limit distribution of COMPANY proprietary/ confidential information only to those individuals within its organization who have a need to know such information in order to accomplish the purpose defined above. Recipient's obligations under this paragraph shall continue for a period of three (3) years from receipt of COMPANY proprietary/confidential information.

C. Recipient's obligations under this clause shall not apply to any portion of such information that:

a) is or becomes publicly available, other than through the Recipient's fault or negligence;

b) is already known to Recipient, without restriction, at the time of receipt;

c) is rightfully and lawfully obtained by the Recipient from another party rightfully and lawfully possessing the same without restriction;

d) is independently developed by the Recipient without having had access to the information disclosed hereunder;

e) is obligated to be produced under an order of a court of competent jurisdiction, providing that COMPANY is immediately notified by Recipient; or

g) is disclosed by COMPANY to a third party without a similar restriction on the rights of such third party.

COMMENT: This clause strikes a middle ground between a requirement that information must be marked in order to qualify for confidential treatment and not specifically requiring confidential treatment for unmarked information that recipient knows or should reasonably know is confidential. From a recipient's point of view, an absolute marking requirement is most

administrable. The "knows or should reasonably know" standard makes management of information difficult for recipient and gives him greater, and unknown, exposure.

Another way to bound responsibility is to limit the information covered to a given type either by specifying (e.g., technical descriptions and drawings) or by excluding other types (e.g., does not include non-technical information such as marketing and sales information).

The exceptions are sometimes made tighter by adding the requirement of "as demonstrated by competent documentary evidence" to paragraphs b) and d).

The period of confidentiality in paragraph (B) should be arrived at with regard to the "half life" of the subject matter and information involved. Often, confidentiality clauses are written without a limit on that period, resulting, in effect, in a perpetual obligation/liability for recipient.

Confidential Information- Liability

Neither party shall be liable for the inadvertent, accidental, unauthorized or mistaken disclosure or use by its employees of Proprietary Information obtained pursuant to this Agreement provided that (a) the Receiving Party handles Proprietary Information of the Disclosing Party which bears such a notice with the same degree of care normally used to protect its own Proprietary Information within its own organization, but in no event any less than reasonable care; (b) upon discovery of such disclosure or use, all reasonable steps are taken to retrieve the disclosed Proprietary Information and to prevent any further inadvertent, accidental, unauthorized, or mistaken disclosure or use; and (c) such disclosure will not relieve the Receiving Party who disclosed the Proprietary Information from its continuing obligation to adhere to the terms and conditions of this Agreement.

COMMENT: This disclaimer gives specific protection to recipients of proprietary information. Conversely, it is not unusual for disclosers of proprietary information, particularly as related to new IP or products, to attempt to include a broad liability, even to the point of consequential damages, for breach of confidentiality. The possible consequences of accepting such a provision are obvious.

Examples of Arbitration Clauses

Unenforceable arbitration clause:

The parties agree to resolve all disputes by mediation and failing mediation, by binding arbitration, but in the case of litigation, the District Court for the Southern District of New York shall have sole jurisdiction.

Clauses to be avoided:

All disputes shall be finally resolved by arbitration before the ICC in accordance with the UNCITRAL rules.

In all arbitration proceedings the Arbitrator shall apply the Federal Rules of Civil Procedure and the Federal Rules of Evidence.

Within seven (7) days of commencement of the arbitration proceedings each Party shall select an arbitrator and the Arbitrators shall select a third Arbitrator who shall act as chairman. The Arbitrators shall hold no more than five (5) hearings and each Party shall be required to submit no more than two (2) briefs.

- This Agreement, and the rights and obligations of the parties hereto, will be governed by the laws of the State of Delaware, without regard to its conflict of law doctrine. With respect to any equitable suit, action or other proceeding seeking to enforce any provision of, or based upon any right arising out of, in connection with or in any way relating to this Agreement or the other transactions contemplated hereby will be brought in the United States District Court for the District of Delaware. Each party hereby irrevocably consents and submits to the jurisdiction [**9] and venue of such court and irrevocably waives any objection with it may now have or hereafter have to the venue of any suit, action or proceeding brought in such court and any claim that such suit, action or proceeding brought in such court has been brought in an inconvenie3nt forum or such court lacks jurisdiction. All other non-equitable actions or proceedings will be resolved pursuant to Section 11.4 and Section 11.5.

  Section 11.5: Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be resolved by one arbitrator in binding arbitration by the American Arbitration Association in accordance with the most recent version of its Commercial Dispute Resolution Procedures. Any judgment or ruling rendered by the arbitrator(s) may be entered and enforced in any court having jurisdiction thereof. The entire arbitration process, measured from the date of filing of the demand for arbitration with the American Arbitration Association through the date of issuance of the ruling, shall be completed within 90 days.

  See Detroit Medical Center v. Provider Healthnet Services, Inc., 269 F Supp, 2d 487, 491 (D. Del. 2003)

Correct arbitration clause:

- All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. Judgment on the Arbitrator's award may be entered in any court of competent jurisdiction.

Seeking equitable relief from a Court where there is a valid arbitration clause in place:

- "The question presented by this case—whether the Arbitration Act bars a court from issuing a preliminary injunction in a case subject to arbitration—is one that has divided the state and federal courts." Merrill Lynch, Pierce, Fenner & Smith, Inc. v. McCollum, 469 U.S. 1127, 1129, 83 L. Ed. 2d 804, 105 S. Ct. 811 (1985). [**19] The division is marked by two arguments: (1) that injunctive relief is needed pending arbitration so that the parties can engage in meaningful arbitration; without it one party can irreparably injure the interests of the other and turn the arbitration into a "hollow formality;" and (2) that injunctive relief should not be permitted because the parties bargained away their rights to have the court consider the merits of their dispute. See Ortho, 882 F.2d at 811. The Third Circuit has decided that injunctive relief should be allowed because:

  > this approach reinforces rather than detracts from the policy of the Arbitration Act… We believe that the congressional desire to enforce arbitration agreements would frequently be frustrated if the courts were precluded from issuing preliminary injunctive relief to preserve the status quo pending arbitration and, ipso facto, the meaningfulness of the arbitration process.

  Ortho, 882 F.2d at 812 (quoting Teradyne, 797 F.2d at 51).

  The reasoning behind the temporary injunctive relief exception, therefore, is focused on the ultimate arbitration of the dispute. The Third Circuit [**20] has not opened the door to allow the court to hear all equitable disputes, as plaintiff has argued. Instead, it has "consistently admonished the courts 'to exercise the utmost restraint and to tread gingerly before intruding upon the arbitral process.'" Olick, 151 F.3d at 136 (quoting Lewis v. Am. Fed'n of State, County and Municipal Employees, 407 F.2d 1185, 1191 (3d Cir. 1969)). Therefore, this Court finds that the Third Circuit's holding in Ortho is limited to the granting of temporary injunctive relief in an arbitrable dispute for the period when the parties await arbitration of their dispute.

See Thompson v. Millennium Validation Services, Inc., 239 F Supp. 2d 478

CONFIDENTIAL

Client No. _____

SERVICES AGREEMENT

X:	**CLIENT**:	[*Enter full name of Client*] (the ***Client***)
PRINCIPAL OFFICE:	**PRINCIPAL OFFICE**:	[*Enter principal address of Client*]
INCORPORATION:	**INCORPORATION**:	[*Enter jurisdiction of formation of Client*]

This Services Agreement consists of the attached Master Terms and Conditions, any Order Form(s) and/ or any addenda or schedules. Together, these documents are referred to as the ***Agreement***. By signing below, each party agrees that it has read the Agreement and will be bound by it with effect from [**amend as applicable:* the date on which the Agreement is signed by both parties / [*enter date the Agreement takes effect*]. This date is referred to as the ***Effective Date***.

X	**[*ENTER FULL NAME OF CLIENT*]**
SIGNED BY:	**SIGNED BY**:
PRINT NAME:	**PRINT NAME**:
TITLE:	**TITLE**:
DATE OF SIGNATURE:	**DATE OF SIGNATURE**:

CONFIDENTIAL

MASTER TERMS AND CONDITIONS

X and the Client agree as follows:

1. Definitions

Agreed Level means the percentage change in the most recently published OECD All Items Rate of Change Index compared with that index published 12 months earlier;

Authorised Location means the location(s) set out in any Order Form where the Services are to be used. Authorised Locations may include any of the Client's offices;

Charges means the Service Fees and any related charges specified in Clause 9.1;

Client's System means any computer system used by the Client for the display of information at the Authorised Location;

Commencement Date means the date on which X makes any Service available to the Client under the Agreement and such Service is capable of being used by the Client or, if later, the billing commencement date set out in the Order Form;

Confidential Information means information in any form (including, but not limited to, models, Software and computer outputs) which is not excluded under Clause 14.2, whether written or oral, of a business, financial or technical nature and which is marked or otherwise indicated as being or is, or ought reasonably to be, known to be confidential and which is disclosed by one party (the ***Disclosing Party***) to the other party (the ***Receiving Party***) through the parties' dealings with each other;

Contributed Data means any data or information supplied by the Client to X under the Agreement;

Information means the information (in whatever form including, but not limited to, still and moving images and sound recordings) contained in the Services;

Information Provider means a client of the X Group or other third party including, but not limited to, any stock, futures or commodities exchange whose Information is contained in the Services;

Maintenance means the use of reasonable efforts to maintain the Software in good operating condition and/ or to restore the Service by repairing, correcting or replacing the Software;

Order Form means X's standard form (whether in writing or electronic) listing the Services subscribed for by the Client and accepted by X;

X Group means X Group plc and those companies (including X) in which X Group plc owns, directly or indirectly, more than 50% of the issued share capital and over which it exercises effective control;

Service Fees means the fees charged by X for the supply of the Services, as set out in any Order Form and/ or any related schedules;

Services means the services supplied by X under the Agreement as set out in any Order Form. Services may be added to and form part of the Agreement by the signing of additional Order Forms and any applicable addenda;

Software means software (or any part of it) and related documentation supplied by X as part of the Services or to enable the Client to access and use the Services. Software also includes bug fixes, upgrades and enhancements;

Support means Maintenance and other support (including training) provided by X or its nominee in respect of any Service as specified in Clause 6 or any relevant addendum; and

Third Party means Information Providers and X's other third party suppliers.

2. Commencement and Duration

2.1 The Agreement will take effect from the Effective Date set out on the front page of the Agreement and will continue for as long as the Client receives the Services.

2.2 Either the Client or X may cancel any Service by giving not less than three (3) months' prior written notice to the other party. Any notice given under this Clause cannot take effect earlier than the [**delete as applicable:* first/ second] anniversary of the Commencement Date for that Service.

3. Provision and use of the Services

3.1 In consideration of the Client's payment of the Charges, X will provide the Client with access to the Services at the Authorised Location in accordance with the Agreement.

3.2 X will not supply, and the Client will not use, the Services in breach of any applicable laws, regulations or market conventions. The Client will use the Information and the Software in accordance with the Agreement, but not otherwise.

3.3 The Client will be responsible for obtaining and maintaining all licences and consents necessary to use the Services at any Authorised Location.

3.4 X will supply the Client with a copy of any available user manual for each Service.

4. Information

4.1 X grants to the Client the rights to use the Information set out in each addendum, for as long as the Client receives the relevant Service.

4.2 Except as otherwise permitted under the Agreement, the Client will not alter, modify, distort, or

manipulate the Information or create derivative works based on the Information.

4.3 Unless otherwise permitted under the Agreement, the Client may store Information contained in a Service only (i) during the period that the Client subscribes to the Service and (ii) on the devices, and at the Authorised Location, to which the Information is supplied.

4.4 On cancellation or termination of any Service or the Agreement, the Client will delete all stored Information obtained from that Service, except as required by applicable law or regulation.

4.5 Where the Client provides Contributed Data, the Client agrees that, except as provided in Clause 4.6, such Contributed Data may be included in any products or services provided by members of the X Group The Client warrants and represents that:

4.5.1 the Contributed Data will be timely and accurate; and

4.5.2 it has the right to supply the Contributed Data to X for use in accordance with this Clause 4.5.

4.6 The Client and X may agree, at the time the Contributed Data is supplied, to restrict the release of Contributed Data to third parties other than the Client and its customers and X will use commercially reasonable endeavours to comply.

5. Software

This Clause applies if X provides the Client with any Software. It sets out the conditions under which X supplies the Software.

5.1 X owns the Software and all rights in the Software or has obtained from a Third Party the right to supply them to the Client.

5.2 The Client will be responsible for providing all necessary consumable items and a satisfactory operating environment for the Software, as designated by X.

5.3 X grants to the Client a non-exclusive, non-transferable licence, for so long as the Client receives the Service to which the Software relates, to use the Software at the Authorised Location in the ordinary course of its own business.

5.4 The Client will have the right to make 2 backup copies of the Software at each Authorised Location, provided that the Client reproduces and includes all copyright, trade mark and other proprietary rights notices on each copy of the Software made by the Client.

5.5 The Client will only use (i) the current version of the Software as is made available to it from time to time by X, or (ii) the immediately prior version of the Software for a period not exceeding 3 months after the date of release of the current version.

5.6 The Client will not, except as permitted under the Agreement:

5.6.1 sub-license, assign, copy (except as permitted under Clause 5.4), modify, merge, distribute, transfer, decompile or reverse-engineer the Software except to the extent this restriction is not permitted under applicable law;

5.6.2 use or allow use of the Software for rental or in the operation of a service bureau, hosting or ASP model;

5.6.3 make any alteration, connection or interface to the Software; or

5.6.4 permit the maintenance or repair of the Software by a party other than X or its nominee.

5.7 On termination of the Service to which the Software relates, the Client will either return the Software (and any copies) to X or deal with them as X may reasonably request.

5.8 Certain software may be subject to relevant export laws and regulations of the United States and other countries. The Client and X each agree to comply with such regulations.

6. Support

6.1 X will provide the following Support in respect of the Services:

6.1.1 providing a reasonable level of initial training to the Client's staff in the use of the Services;

6.1.2 providing the Client with telephone help desk advice on how to overcome operational problems with the Services; and

6.1.3 providing Maintenance.

6.2 Support included in the Service Fees is provided during X's standard support hours (which X will advise on request). Additional Support, or Support outside X's standard support hours, may be available on payment of a further charge.

6.3 Unless the parties agree otherwise in writing, Support will be provided only by X or its nominees. To enable X to provide the Client with Support, the Client will arrange for X to have access to the Authorised Location at all reasonable times and provide all necessary co-operation and facilities.

6.4 The Service Fees do not include Maintenance:

6.4.1 required as a result of accident, negligence or misuse not attributable to the X Group;

6.4.2 resulting from failure of the operating environment or causes other than ordinary use in accordance with the user documentation;

6.4.3 resulting from any attempt made to repair, service, relocate or modify Software by persons other than X or its nominee;

6.4.4 of non-current versions of the Software where current versions have been made available to the Client (subject to Clause 5.5), or maintenance of current versions containing unauthorised modifications;

6.4.5 of, or necessitated by the operation of, software or hardware not supplied by the X Group;

6.4.6 arising from overload of the Client's system not caused by the X Group; or

6.4.7 involving any visit to the Authorised Location requested by the Client where there is no demonstrable fault or failure caused by the Software.

6.5 X is under no obligation to provide Maintenance in relation to the matters referred to in Clause 6.4 although if requested by the Client, X may do so (at its discretion) at its then current consultancy rates.

7. Trials

7.1 Where X agrees to provide a Service to the Client on a trial basis (either paid, unpaid, or for beta, pilot or other evaluation) (***Trial***), the following terms apply:

7.1.1 In addition to this Clause 7, use of any Service for a Trial will be subject to the terms of the Agreement except that X shall not provide Maintenance for any Service provided as part of a Trial;

7.1.2 Unless X and the Client agree otherwise, Trials will last for 4 weeks from installation of the relevant Service. Either X or the Client may terminate any Trial by giving written notice to the other party no less than 5 days prior to the end of the Trial. In the absence of such notice, X shall continue to provide the Service subject to the terms of the Agreement;

7.1.3 The Client will assist X in any Trial by:

(a) appointing a primary point of contact with X;

(b) documenting and reporting any difficulties or malfunctions in using the Service; and

(c) complying with any guidance X gives in relation to the Trial.

7.2 The provision of any Service as part of a Trial does not oblige X to make any enhancements or modifications to any Service or, in the case of any Service which has not yet been launched, launch or provide such Service to the Client at the end of the Trial.

8. Proprietary Rights

8.1 X retains control over the form and content of the Services. Although X may alter them from time to time, X will not change their fundamental nature.

8.2 The Client will not:

8.2.1 acquire any intellectual property or similar rights in the Services, Information or Software; or

8.2.2 remove or conceal any copyright, trade mark or other proprietary rights notices incorporated in the Services. The Client agrees to comply with notices bringing such rights to its attention and all laws relating to such rights.

8.3 Except as otherwise permitted in the Agreement the Client shall not use X's name or trade marks without X's prior written consent. Any goodwill in and associated with X's name or trade marks will inure solely to the benefit of the X Group.

8.4 The Client acknowledges that Third Parties may have rights in Information or Software which they provide. The Client agrees to comply with any restrictions or conditions imposed on the use, access, storage or re-distribution of Information or Software by the relevant Third Party, as notified by X or such Third Party. The Client may be required to enter into a separate agreement with X or with such Third Party.

9. Charges

9.1 The Client will pay the Service Fees and the following related charges (where applicable as notified by X):

9.1.1 installation, relocation and removal charges;

9.1.2 charges for certain items of Support not included in the Service Fees;

9.1.3 charges for communications facilities; and

9.1.4 charges for Information and Software levied by a Third Party.

9.2 X will endeavour to provide reasonable prior notice of any change to such related charges, but the Client acknowledges that X may not be able to do so if the change is imposed on X by a Third Party without sufficient time for X to notify the Client in advance.

9.3 In addition to the Charges, the Client will pay all applicable taxes and duties (including witholding tax) payable in respect of the Services, so that after payment of such taxes and duties the amount received by X is not less than the Charges.

9.4 The Service Fees for each Service are payable quarterly in advance from the Commencement Date for that Service. X will invoice the Client for the Charges and Client will pay the Charges in full, without right of set off or deduction, within 30 days of the date of invoice.

9.5 X shall be entitled to charge the Client interest on any amounts not paid when due under the Agreement, at the rate of 2% per annum above the Bank of Scotland's base rate from time to time from the due date until the date of payment.

9.6 X may adjust or change the basis of calculation of the Service Fees on not less than 3 months' prior written notice. The Client may cancel any Service whose aggregate Service Fees taken over the 12 months preceding the date of X's notice are to be increased by a percentage above the Agreed Level.

9.7 The Client may exercise its rights of cancellation under Clause 9.6 by giving X written notice within 30 days of the date of X's notice referred to in Clause 9.6. The relevant Service will be cancelled from the date on which the Service Fees would have increased.

10 Passwords and Privacy

10.1 Some Services are accessed using passwords, account names or identifiers which X will assign to the Client and which the Client will use to access the relevant Service.

10.2 The Client agrees to:
10.2.1 ensure that each password is kept confidential and is not shared amongst individuals;
10.2.2 comply with the terms of any reasonable instructions X may issue from time to time, with respect to use of passwords; and
10.2.3 notify X promptly if an individual ceases to be a user of any Service accessed via passwords or if the Client becomes aware of any password being used by a person not authorised by the Client to access that Service. X may then cancel the password and will assign a new password to the Client.
10.3 X collects information about the way the Client uses the Services, including, without limitation, logs and Traffic Data (as defined below) (***Data***) and the Client agrees that X may use software tools such as cookies to do this. Except where the law requires X to retain it for longer, such Data may be retained for a reasonable period after it was generated.
10.4 ***Traffic Data*** means data relating to any activity on X Group networks including session data and clickstreams.
10.5 By using the Services, the Client consents to the X Group retaining and processing Data for the purposes of support, capacity planning, to detect and prevent breaches of network security, the law or the terms of the Agreement, and for other activities related to the administration, management and improvement of the Services.
10.6 In addition, the X Group may use this Data to customise, obtain feedback on and market X services, in accordance with the data protection/ privacy policy set out in the privacy footer at www.X.com and/ or in a privacy notice provided to individuals as part of any Service.
10.7 The Client acknowledges that the X Group processes information about (i) users of the Services and (ii) individuals the X Group deals with in its day-to-day business, in accordance with and for the purposes set out above and in the privacy/ data protection policy referred to in Clause 10.6 above.

11. Indemnities

11.1 X agrees, subject to Clauses 11.2, 11.3, 11.5, 12.3 and 12.5, to indemnify the Client against any direct loss or cost which the Client incurs arising out of any claim:
11.1.1 that Software owned by the X Group infringes:
(a) any valid patent that, as of the Effective Date, is duly issued by the United States, Canada, any European Union country, Switzerland, Japan, Singapore, Australia or New Zealand (each a ***Primary Country***) or that, as of the Effective Date, is duly issued in any other country that is a member of the Patent Cooperation Treaty (each an ***Other Country***) provided that the Other Country patent is a counterpart (i.e. foreign filed equivalent) of a Primary Country patent; or
(b) any valid copyright or trade mark of a third party; and
11.1.2 of copyright or database right infringement in relation to Information owned by the X Group,
provided that X's liability for any loss or cost resulting from restriction of the Client's use of Software or Information is limited to (at X's discretion):
(a) procuring the right for the Client to continue to use the Software or Information;
(b) modifying the Software or Information so that it becomes non-infringing;
(c) replacing the Software or Information with similar software or content, provided that such replacement software or content does not alter the fundamental nature of the relevant Service; or
(d) removing the Software or Information and refunding to the Client the relevant part of any Service Fees already paid relating to the period after removal.
11.2 The indemnity under Clause 11.1.1 shall not extend to any claim of infringement arising out of or related to:
11.2.1 use of a version of the Software other than a current version made available to the Client (subject to Clause 5.5), if infringement would have been avoided by the use of a current version of the Software;
11.2.2 modification of the Software by anyone other than X or its nominee;
11.2.3 the combination, operation or use of the Software with any third party software, hardware or other materials, where such combination, operation or use is the cause of infringement; or
11.2.4 information, technology or materials provided by the Client.
11.3 X makes no representations or warranties with regard to Software or Information belonging to a Third Party. If the Client has any claim with respect to Third Party Software or Information, X will indemnity the Client under Clause 11.1 to the extent X is indemnified by the Third Party. X may transfer its exclusive rights to control the defence or settlement of such claim to the Third Party.
11.4 The Client agrees (subject to Clause 11.5) to indemnify X for:
11.4.1 any loss or damage caused to the Software for the then current replacement cost of new identical Software unless caused by a member of the X Group; and
11.4.2 any loss, damage or cost which X incurs as a result of any claim brought against X by a third party as a result of (i) such third party's access to or use of Information via the Client or (ii) the Client's breach of the Agreement.
11.5 Any obligation under the Agreement to indemnify against third party claims arises only if:

11.5.1 the indemnifying party and, if applicable, the relevant Third Party, is given immediate and complete control of the indemnified claim; and

11.5.2 the indemnified party co-operates at the expense of the indemnifying party or the relevant Third Party and does not prejudice in any manner the conduct of such claim.

12 Liability

12.1 X warrants that it will provide the Services with reasonable care and skill.

12.2 X accepts liability for the following categories of damage caused by its negligence or failure to exercise reasonable care and skill in providing the Services:

12.2.1 death or personal injury; and

12.2.2 direct loss (subject to the limits on liability in Clauses 12.3, 12.4 and 12.5).

12.3 Except as expressly stated in the Agreement:

12.3.1 neither X nor any member of the X Group will be liable for any loss or damage arising from errors, delays, non-delivery or interruptions in the Services, for loss of or damage to data, computer files or programs, or for any actions taken in reliance on the Services; and

12.3.2 all terms, conditions, warranties, representations or undertakings, express or implied by law in relation to the Services, the Information and the Software are excluded. Without limitation, the Client acknowledges that it has seen a demonstration of and/ or is aware of the general form, content and functionality of the Services and has satisfied itself that they are suitable for the Client's purposes.

12.4 The aggregate liability of each party to the other or any third party for loss, damage or costs under the Agreement for each calendar year will not exceed 1 year's Service Fees. This limitation of liability does not apply to:

12.4.1 X's liability under Clauses 11.1 and 12.2.1;

12.4.2 the Client's liability under Clauses 3.2, 9.1 or 11.4; or

12.4.3 liability of either party for fraud, fraudulent misrepresentation or deceit.

12.5 Under no circumstances will X or the Client be liable for any indirect, punitive, incidental, special or consequential damages arising from the Agreement, including, but not limited to, loss of profit, goodwill, business opportunity or anticipated saving.

12.6 Neither X or the Client will be liable for any loss or failure to perform an obligation under the Agreement (except payment obligations) due to circumstances beyond its reasonable control. Any failure to perform due to circumstances beyond a party's control will be remedied as soon as reasonably practical. If such circumstances continue for more than 1 month, either party may cancel any affected Service immediately on notice.

12.7 Nothing in the Agreement affects the Client's rights which cannot validly be excluded or modified by applicable law.

13 Termination

13.1 Either party may terminate the Agreement immediately in whole or in part by written notice if the other party materially breaches any of its obligations under the Agreement and, if the breach is capable of remedy, fails to remedy such breach within:

13.1.1 72 hours of written request if the Client breaches Clause 3.2; and

13.1.2 30 days of written request for any other breach.

13.2 Either party may terminate the Agreement immediately and without notice if:

13.2.1 the other enters into a composition with its creditors;

13.2.2 an order is made for the winding up of the other;

13.2.3 an effective resolution is passed for the winding up of the other (other than for the purposes of amalgamation or reconstruction on terms approved by the first party, such approval not to be unreasonably withheld); or

13.2.4 the other has a receiver, manager, administrative receiver or administrator appointed in respect of it.

13.3 In addition to the above, if the Client materially breaches the Agreement, X may immediately suspend the Services in whole or in part without penalty until the breach is remedied.

13.4 X may cancel a Service in whole or in part by written notice if the provision of all or part of that Service:

13.4.1 depends on an agreement between any member of the X Group and a Third Party, and that agreement is modified or terminated for any reason or breached by the Third Party and as a result X is unable to continue to provide all or part of that Service upon reasonably acceptable terms; or

13.4.2 becomes illegal or contrary to any rule, regulation, guideline or request of any exchange or regulatory authority.

13.5 X may, on 6 months' written notice, cease providing a Service if X withdraws it from a country where any Authorised Location is situated.

13.6 If Clauses 9.7, 13.4 or 13.5 apply, the Client will be entitled to a refund of the part of the Service Fees paid in advance for the cancelled part of the Service.

13.7 If the Client:

13.7.1 cancels any Service other than when permitted by the Agreement; or

13.7.2 is in breach of any payment obligation under the Agreement and as a consequence X terminates the Agreement,

X will be entitled to recover from the Client, as liquidated damages, 75% of the Service Fees which would have been payable until the date the relevant Service may be cancelled under Clause 2.2. X and the Client agree that this constitutes a realistic pre-estimate of X's loss and is not intended to be a penalty.

13.8 Termination of the Agreement will not affect either party's accrued rights and obligations. The following will continue to apply after termination:

13.8.1 the Client's obligation to pay all outstanding Charges accrued up to the date of termination;

13.8.2 all disclaimers, indemnities and restrictions relating to the Services;

13.8.3 X's right to use Contributed Data under Clause 4.5;

13.8.4 X's right of access to any Authorised Location under Clause 16.8 to confirm deletion of any Software and Information; and

13.8.5 the confidentiality undertaking in Clause 14.

14 Confidentiality

14.1 Each party agrees:

14.1.1 to hold the Confidential Information in confidence and, not without the Disclosing Party's prior written consent, to disclose any part of it to any person other than those directly concerned with the parties' dealings with each other and whose knowledge of such Confidential Information is essential for such dealings. The Receiving Party will ensure that those persons comply with the obligations imposed on the Receiving Party under this Clause 14. The Receiving Party shall be liable for such person's default;

14.1.2 not, without the Disclosing Party's prior written consent, to use the Confidential Information for any purpose other than for its dealings with the Disclosing Party;

14.1.3 to delete the Confidential Information from any device and/or return it to the Disclosing Party upon demand and termination of the Agreement, except for one copy of such Confidential Information as is required to be retained by law, regulation, professional standards or reasonable business practice the Receiving Party; and

14.1.4 to use reasonable endeavours to provide the Disclosing Party with prompt notice if the Receiving Party becomes legally compelled to disclose any of the Confidential Information, so that the Disclosing Party may seek a protective order or other appropriate remedy. If such order or remedy is not available in time, the obligation of confidentiality shall be waived to the extent necessary to comply with the law.

14.2 The obligation of confidentiality will not apply to information which:

14.2.1 is, at the time of disclosure, or subsequently through no act or omission of the Receiving Party becomes, generally available to the public;

14.2.2 becomes rightfully known to the Receiving Party through a third party with no obligation of confidentiality;

14.2.3 the Receiving Party is able to prove was lawfully in the possession of the Receiving Party prior to such disclosure; or

14.2.4 is independently developed by the Receiving Party.

14.3 This undertaking will be binding for as long as the Confidential Information retains commercial value.

14.4 No public announcement, press release, communication or circular (other than to the extent required by law or regulation) concerning the Agreement will be made or sent by either party without the prior written consent of the other.

15 Entire Agreement

15.1 The Agreement contains the parties' entire understanding regarding the Services and supersedes all proposals and other representations, statements, negotiations and undertakings in each case, verbal or written, relating to the Services. [**delete as applicable:* It applies to any Services already supplied by X to the Client.]

15.2 In entering into the Agreement, the Client has not relied on, and shall have no remedy in respect of, any statement, warranty or representation (except in the case of fraud) made by X other than those set out in the Agreement.

15.3 The Agreement may only be varied by a written amendment signed by X and the Client.

16 General

16.1 Any notices under the Agreement shall be given in writing and sent by registered mail, courier, fax or email or delivered in person to the addresses/ numbers set out in the Order Form or to such other address or number as may be designated by a party by giving notice written notice to the other party in accordance with this Clause 16.1.

16.2 Each party will only send notices relating to breach or termination by registered mail, courier or fax or delivered in person.

16.3 Notices will be deemed to be received 3 business days after being sent or on proof of delivery if earlier.

16.4 Neither party may assign any of its rights or obligations under the Agreement or any part of it without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed). However, the Client agrees that X may assign any of its rights or obligations to another member of the X Group without consent.

16.5 The Client agrees that X may sub-contract the performance of any of its obligations under the Agreement. X will remain responsible for performance of the Agreement by its sub-contractors and nominees.

16.6 If any part of the Agreement that is not fundamental is found to be illegal or unenforceable, this will not affect the validity and enforceability of the remainder of the Agreement.

16.7 If either party delays or fails to exercise any right or remedy under the Agreement, that party will not have waived that right or remedy.

16.8 X, Third Parties and their respective agents shall have the right, during normal business hours, to audit the Client to verify the Client's compliance with the Agreement provided X gives 5 business days' advance notice of its intention to audit. The Client will pay the costs of such audit if it reveals that the Client has not been in compliance with the Agreement. Client will, if requested, certify to X that it is in compliance with the Agreement. During verification, X and its agents will comply with the Client's reasonable requirements relating to security and confidentiality.

16.9 The Client agrees that members of the X Group have the right under the Contracts (Rights of Third Parties) Act 1999 (the ***Act***) to enforce and/ or rely on the terms of the Agreement. The Act will not affect any right or remedy available to any member of the X Group apart from that Act. Notwithstanding the foregoing provisions of this Clause, the Agreement may be terminated or varied in accordance with its terms without the consent of any other member of the X Group.

16.10 The Agreement is governed by English law. Both parties submit to the non-exclusive jurisdiction of the English courts.

