

SOFTWARE AND SERVICES SUPPLY TERMS

AGREEMENT

These terms shall constitute the agreement between you (‘LICENSEE’) and **BUSINESS LOGIC SYSTEMS LIMITED** (registered in England and Wales company no. 03536760) whose registered office is located at Buckingham House, West Street, Newbury, Berkshire, RG14 1BE, United Kingdom (‘BUSINESS LOGIC’) upon which BUSINESS LOGIC shall supply software or other technical services to you unless there is a separate written and signed agreement between you and BUSINESS LOGIC intended by the parties to be the sole agreement with respect to such supply in which event such agreement shall apply to the supply to the total exclusion of these terms. In the absence of any such written and signed agreement between you and BUSINESS LOGIC these terms shall apply to the exclusion of any other terms and conditions, including any such terms forming part of or purporting to apply by reason of any order form or process initiated, issued or delivered by you to BUSINESS LOGIC in connection with any supply by BUSINESS LOGIC of software or services

1. DEFINITIONS

In these terms, unless the context otherwise requires, the following words and expressions mean

- 1.1 ‘Affiliate’ means any person, partnership, joint venture, corporation, subsidiary, or other form of enterprise, domestic or foreign, directly or indirectly controlling, controlled by or under common control with the LICENSEE or BUSINESS LOGIC
- 1.2 ‘Agreed Form’ means the form and terms of a document agreed between and for the purposes of identification initialled by or on behalf of the parties
- 1.3 ‘LICENSEE Equipment’ means any computer hardware and equipment to be acquired or supplied by LICENSEE for any Software
- 1.4 ‘Customised Software’ means software code changes and additions to Software specifically developed or modified or written by BUSINESS LOGIC pursuant to these terms or any Workshop Document including any Statement of Work
- 1.5 ‘Documentation’ means the documentation to be provided by BUSINESS LOGIC pursuant to **clause 16**
- 1.6 ‘Intellectual Property Right’ means shall mean any patent right in design copyright trade mark or any other intellectual property right recognised by law whether registered or not
- 1.7 ‘Location(s)’ or ‘Delivery Location(s)’ means an address of the LICENSEE at which it is agreed any Software is to be installed
- 1.8 ‘Third Party Software’ means any standard software components or modules owned by a third party which BUSINESS LOGIC agrees to supply to the LICENSEE under these terms
- 1.9 ‘Price’ means any price for Software and Services to be provided under these terms that is agreed between BUSINESS LOGIC and LICENSEE, as may be varied pursuant to **clauses 3, 5 or 12**
- 1.10 ‘Ready for Use’ means fully installed and capable of live production or actually used by the LICENSEE for live production
- 1.11 ‘Services’ means services to be provided by BUSINESS LOGIC to the LICENSEE under these terms including, without limitation, the delivery, installation and implementation of any Software, services specified in any Workshop Document or Statement of Work and Training
- 1.12 ‘Software’ means BUSINESS LOGIC Software, any Customised Software and any Third Party Software
- 1.13 ‘Statement of Work’ means any applicable statement in writing setting out work to be performed by BUSINESS LOGIC for the LICENSEE and agreed by the parties pursuant to these terms
- 1.14 ‘BUSINESS LOGIC Software’ means standard software components or modules of the Software that are owned by BUSINESS LOGIC and delivered to the LICENSEE under these terms
- 1.15 ‘Training’ means training in the use of the Software agreed to be provided by BUSINESS LOGIC for the LICENSEE’s staff
- 1.16 ‘Workshop Document(s)’ means any documentation that the parties agree will be the output from workshops conducted pursuant to **clause 3** which, without limitation, may include a requirements analysis, project initiation document, project plan, project control document, Statements of Work, the specification of the facilities and functions to be provided by any Software BUSINESS LOGIC may agree to supply, as these may be amended from time to time by agreement or pursuant to **clauses 12 or 14**

2. SUPPLIER RESPONSIBILITIES

- 2.1 BUSINESS LOGIC shall, subject to and in accordance with these terms and any applicable Workshop Documents
 - 2.1.1 provide workshops in accordance with **clause 3** and with the full co-operation and assistance of the LICENSEE prepare and deliver any Workshop Document
 - 2.1.2 procure the offer from relevant third parties of a grant to the LICENSEE of a non-exclusive licence to use any Third Party Software upon terms reasonably consistent with the terms that such third parties generally offer such licences
 - 2.1.3 install the Software upon the LICENSEE Equipment
 - 2.1.4 configure the Software and develop any Customised Software
 - 2.1.5 deliver the Documentation to the LICENSEE
 - 2.1.7 provide Training
 - 2.1.8 use its reasonable endeavours to provide any Software Ready for Use
 - 2.1.9 provide maintenance and support for the Software subject to and in accordance with BUSINESS LOGIC’s support agreement in the Agreed Form (provided that the parties have duly executed the same)
- 2.2 BUSINESS LOGIC shall
 - 2.2.1 provide suitably skilled and trained and knowledgeable personnel to carry out the Services
 - 2.2.2 unless otherwise agreed, charge for BUSINESS LOGIC’s personnel providing the Services at BUSINESS LOGIC’s standard rates and expense charges applying from time to time

3. WORKSHOPS AND WORKSHOP OUTPUT DOCUMENTATION

- 3.1 BUSINESS LOGIC shall hold such workshops as the parties may agree designed to elicit the LICENSEE's precise requirements for any Services or Software, such workshops to be attended by such of the LICENSEE's staff as the LICENSEE may designate. The LICENSEE acknowledges and agrees that it is essential for BUSINESS LOGIC to produce any Workshop Documents in a timely and professionally competent manner that the LICENSEE ensures that its key information technology or project staff nominated in writing to BUSINESS LOGIC (öLICENSEE Contactsö) attend and contribute effectively at and provide all information reasonably requested by BUSINESS LOGIC at all such workshops. As soon as practicable following any relevant workshop, BUSINESS LOGIC shall prepare and submit to the LICENSEE for approval a draft of any Workshop Documents which has been agreed by the parties to be a deliverable from such workshop. If applicable, the draft shall be accompanied by a written statement of the material divergences, if any, from any agreed pre-workshop documentation, such as a preliminary specification, preliminary scoping document, a response to an invitation to tender or any other such document identified by the parties for this purpose (including, if relevant, the impact of such divergences upon the Price (including the estimated cost of the Services) and any preliminary project timetable)
- 3.2 The LICENSEE shall inform BUSINESS LOGIC in writing within fourteen (14) days of its receipt of the draft Workshop Documents as to whether such draft is approved and, if not, what changes the LICENSEE may reasonably require. BUSINESS LOGIC shall use its reasonable endeavours to accommodate any such changes in a revised draft of the Workshop Documents (provided that BUSINESS LOGIC shall not be obliged to accommodate revisions that would take the Services or Software outside the scope of any agreed pre-workshop document) and shall use its reasonable endeavours to accommodate any other reasonably requested changes (subject to the LICENSEE agreeing to any proposed change in Price, estimated cost of the Services or anticipated project timetable or any other adverse implications such requested changes may involve)
- 3.3 After revising the draft Workshop Document, BUSINESS LOGIC shall re-submit it to the LICENSEE for written approval, which the LICENSEE shall not unreasonably withhold or delay. For the avoidance of doubt, in the event that the LICENSEE does not approve for any reason any Workshop Document, BUSINESS LOGIC shall be entitled to be paid for its time spent in connection with preparing such document and in performing other agreed work up to and including any date that the parties agree to cease or suspend the delivery of Services under these terms

4. PROJECT MANAGEMENT

- 4.1 BUSINESS LOGIC shall nominate in writing to the LICENSEE a suitably qualified, competent and trained project manager (öProject Managerö). The Project Manager shall manage the day to day performance of BUSINESS LOGIC's obligations under these terms. The LICENSEE has nominated suitably qualified, competent and trained personnel (öLICENSEE Contactsö) to manage the LICENSEE's interests and obligations under these terms. The Project Manager and LICENSEE Contacts shall, other than in exceptional circumstances, attend all of the meetings referred to in **clause 4.3** below
- 4.2 The parties shall use their respective reasonable endeavours to avoid changing any Project Manager or LICENSEE Contacts where such a change would be reasonably likely to impact adversely on the ability of either party to meet mutually planned outcomes for any project under these terms or any Statement of Works. In the event that a party makes a change to relevant personnel that has or would be reasonably likely to have the above stated adverse impact, the parties shall meet as soon as practicable to discuss its implications and to negotiate in good faith with a view to agreeing such changes as are reasonably required to these terms or any Workshop Document and in the absence of agreement on such changes that party shall not be able to enforce any obligation against the other party the performance of which has been adversely affected by the change to personnel
- 4.3 During the performance of all projects or Statements of Work agreed to be undertaken by the parties hereunder the parties shall meet at such times or intervals as specified in any Workshop Document in order to monitor the performance of the parties' obligations and the progress of work with the aim of ensuring as best as practicable that completion of projects or work takes place in accordance with any agreed timetable

5. PRICE AND PAYMENT

- 5.1 Invoices and payments shall be in Pounds Sterling (£) unless otherwise agreed either generally or for specific projects or Statements of Work. Except for any payment due in accordance with any agreed payment schedule, all payments shall be made by the LICENSEE within thirty (30) days of the due date or of the date of the appropriate tax invoice issued by BUSINESS LOGIC (whichever is the later). BUSINESS LOGIC's current prices for Software licences and consultancy rates and expense charges for Services are available upon request. BUSINESS LOGIC may at any time revise its Software licence fees and standard rates and expense charges applying from time to time
- 5.2 Unless otherwise agreed, all Services shall be charged on a time and materials basis. Any Price, agreed for the purposes of these terms, includes only the number of days estimated by BUSINESS LOGIC as being required for the provision of the relevant agreed Services. If the Services are completed in less than the total number of days so indicated, the LICENSEE shall not be required to make any payment to BUSINESS LOGIC in respect of the unused days and the Price shall be reduced accordingly. Subject to **clause 5.7** BUSINESS LOGIC shall be entitled to charge the LICENSEE for any additional days required in order to complete the provision of such agreed Services. BUSINESS LOGIC shall also be entitled to charge for additional days attributable to any changes agreed by the parties to the Training or other Services to be delivered under these terms or to any breach of these terms by the LICENSEE
- 5.3 The LICENSEE shall reimburse BUSINESS LOGIC for any reasonable expenses necessarily incurred by BUSINESS LOGIC in connection with the provision of the Services
- 5.4 The Price and fees for Services are exclusive of Value Added Tax or other excises, taxes, duties, levies, fees or similar charges imposed on BUSINESS LOGIC or LICENSEE by any Government or taxing authority (other than corporation taxes imposed on BUSINESS LOGIC's income) related to any supplies under these terms (öTax(es)ö), all of which shall be paid by the LICENSEE at the rate and in the manner for the time being prescribed by applicable law, unless the LICENSEE has provided BUSINESS LOGIC with an appropriate certificate of exemption from the applicable Government or taxing authority with respect to such supply for the Delivery Location. öDelivery Locationö means the location where BUSINESS LOGIC transfers title or possession of any hardware or other equipment supplied under these terms to the LICENSEE or designate or the location where Services are performed or, in the case of remote or intangible Services, where the Software being serviced is located. Taxes, when applicable, shall appear as separate items on BUSINESS LOGIC's invoice
- All sums payable to BUSINESS LOGIC under these terms shall be paid free and clear of all deductions or withholdings unless the deduction or withholding is required by law. If any deduction or withholding is required by law to be made from any such sum the LICENSEE shall pay such additional amount as shall be required to ensure that the net amount received by BUSINESS LOGIC will equal the full amount which would have been received by it had no such deduction or withholding been made

- 5.5 In accordance with the Late Payments Of Commercial Debts (Interest) Act 1998, if any sum payable under these terms is not paid within 30 days after the due date then (without prejudice to BUSINESS LOGIC's other rights and remedies) BUSINESS LOGIC reserves the right to suspend the provision of the Services and/or to charge interest on such sum on a day to day basis (as well after as before any judgment) from the date or last date for payment thereof to the date of actual payment (both dates inclusive) at the rate of eight per cent (8%) above the base rate of Bank of England (or such other London Clearing Bank as BUSINESS LOGIC may nominate) from time to time in force compounded quarterly. Such interest shall be paid on demand. To be excluded from the late payment charge a bona fide disputed invoice amount shall be notified in writing to BUSINESS LOGIC within fourteen days of receipt of the relevant invoice
- 5.6 Except where otherwise agreed by the parties in writing, the Services shall be provided between the hours of 9.00am and 5.30pm Monday to Friday, excepting statutory holidays. Where the Services are provided outside these times at the written request of the LICENSEE, BUSINESS LOGIC may increase its then applicable per day rates by 50% or by 100% in the case of Services provided on a Sunday (or other statutory holiday) and, if applicable, the Price shall be increased accordingly
- 5.7 As soon as practicable upon becoming aware that the number of days estimated for the provision of any Service will need to be exceeded to enable the relevant Service to be completed or delivered BUSINESS LOGIC shall notify the LICENSEE of the fact and the reasons therefore and provide to the LICENSEE BUSINESS LOGIC's best estimate of the additional days required to complete the provision of the relevant Service. BUSINESS LOGIC shall not be entitled to invoice the LICENSEE for any days in excess of those estimated with respect to any Service without the consent of the LICENSEE provided that the LICENSEE acknowledges and accepts that the withholding of any such consent by it may result in the relevant Software or Service not being completed or delivered
- 5.8 Once a date for the delivery of Services has been agreed by the LICENSEE and BUSINESS LOGIC then both parties will take all reasonable steps to prevent that date being cancelled or postponed. In the event that such a date is cancelled or postponed by the LICENSEE for any reason and, having made all reasonable endeavours to do so BUSINESS LOGIC is unable to redeploy to alternative paid services resources it has allocated to the delivery of such Services on such date, the following charges shall apply
- 5.8.1 if cancelled or postponed within 4 working days of the agreed date there will be payable by the LICENSEE a charge calculated at 100% of the Services fees that BUSINESS LOGIC would otherwise have been entitled to charge the LICENSEE for the delivery of Services on that date
- 5.8.2 if cancelled or postponed between 4 and 8 working days of the agreed date there will be payable by the LICENSEE a charge calculated at 50% of the Services fees that BUSINESS LOGIC would otherwise have been entitled to charge the LICENSEE for the delivery of Services on that date
- 5.9 It is agreed and understood by the LICENSEE that no pricing or payment plan whatsoever applicable to recurring services such as (but not necessarily limited to) training or Software support and maintenance is in any way to be considered as valid and enforceable for periods of recurring services in excess of those expressly stated and provided for or for one (1) calendar year from the date when BUSINESS LOGIC's obligations began if documentation is contradictory, unclear or imprecise as to the period of recurring services over which the price or payment plan applies

6. CUSTOMER EQUIPMENT

BUSINESS LOGIC is not a manufacturer of LICENSEE Equipment. The LICENSEE acknowledges and accepts that any advice provided by BUSINESS LOGIC on LICENSEE Equipment selection by the LICENSEE is based upon the requirements of the LICENSEE's business as made known by the LICENSEE to BUSINESS LOGIC at the time and recommendations made from time to time by such equipment manufacturers and other relevant third party software providers. It is the LICENSEE's responsibility to re-confirm any and all configurations and/or sizing requirements with their chosen provider of the LICENSEE Equipment, for which BUSINESS LOGIC specifically excludes and accepts no liability including but not limited to fitness for use with the Software and/or suitability for the LICENSEE's purpose

7. LOCATION PREPARATION

- 7.1 Upon request by the LICENSEE BUSINESS LOGIC shall supply to the LICENSEE in reasonable time before delivery of any Software such information as BUSINESS LOGIC has available to it to enable the LICENSEE to prepare the relevant LICENSEE Equipment and Location for the installation of the Software and to provide proper environmental and operational conditions for the efficient working and maintenance thereof. The LICENSEE shall at its own expense prepare the Location and provide such environmental and operational conditions as a required by the Software prior to delivery
- 7.2 The LICENSEE shall be responsible for ensuring that any relevant LICENSEE Equipment is installed and operational at a Location before any date specified or agreed in a Workshop Document or otherwise for the installation of any Software at such Location

8. INFORMATION, ACCESS AND INSTALLATION

- 8.1 The LICENSEE shall provide BUSINESS LOGIC with any information which BUSINESS LOGIC may reasonably require from time to time to enable BUSINESS LOGIC to perform its obligations under these terms or any Statement of Work
- 8.2 The LICENSEE shall, for the purposes of these terms, afford to the authorised personnel of BUSINESS LOGIC during normal working hours or as otherwise agreed access to any relevant Location and shall provide adequate free working space and such other facilities at such Location as may be reasonably requested by BUSINESS LOGIC for the delivery, installation, implementation and, if applicable, testing of the Software or to provide the Services. The LICENSEE shall comply with its obligations under applicable health and safety regulations with respect to the provision of such access and facilities to BUSINESS LOGIC. BUSINESS LOGIC will take all practical steps to ensure that its personnel will, whenever on LICENSEE's premises, obey all reasonable security and health and safety standards, procedures and directions notified to it by LICENSEE
- 8.3 BUSINESS LOGIC's ability to deliver the Services also depends upon the LICENSEE's full and timely cooperation, as well as the accuracy and completeness of any information the LICENSEE provides. BUSINESS LOGIC is not responsible for any loss suffered by the LICENSEE if the LICENSEE does not provide it with this access, cooperation and information

- 8.4 In the event that during any installation, configuration or testing of the Software upon the LICENSEE Equipment by BUSINESS LOGIC prior to acceptance of such Software pursuant to **clause 10**, corruption of the LICENSEE's data is caused by a Software error, BUSINESS LOGIC shall provide reasonable assistance to the LICENSEE to restore the LICENSEE's data to the condition in which it would have been had the Software error not occurred, subject to regular and proper data backups having been taken and stored safely by the LICENSEE. BUSINESS LOGIC gives no warranty that it will be able to restore the LICENSEE's data. It is the sole and exclusive responsibility of the LICENSEE to ensure it has in place and maintains such procedures and facilities as are reasonably necessary for the recovery and reconstruction of any lost, damaged or altered files, data, or programs and BUSINESS LOGIC shall have no liability or responsibility under these terms to restore the LICENSEE's data other than in circumstances specified in this **clause 8.4**
- 8.5 Without limiting any other provision of these terms and because of the very type and nature of any work to be undertaken by BUSINESS LOGIC under these terms, the LICENSEE agrees to use its best endeavours (without charge or cost to BUSINESS LOGIC) to assist BUSINESS LOGIC to ensure the success of any applications BUSINESS LOGIC may need to make for obtaining exemptions to or compliance with rules relating to the use of BUSINESS LOGIC personnel in the country of the Location. If for any reason such applications made by BUSINESS LOGIC fail, then the LICENSEE and BUSINESS LOGIC will work together in good faith to come up with a suitable mutually agreeable solution to any such rules

9. PRE DELIVERY TESTS AND SOFTWARE DELIVERY

- 9.1 BUSINESS LOGIC shall submit any BUSINESS LOGIC Software and Customised Software to its standard tests, before delivery to the LICENSEE. BUSINESS LOGIC shall promptly supply to the LICENSEE on request copies of the specification of the tests and certify that BUSINESS LOGIC Software or Customised Software has passed the same
- 9.2 The LICENSEE or its authorised representative may attend the tests referred to in **clause 9.1**. BUSINESS LOGIC shall give the LICENSEE at least 7 days' written notice of the date and time at which BUSINESS LOGIC proposes to carry out the tests. In the event of any delay or failure by the LICENSEE or its authorised representative in attending the tests at such time, BUSINESS LOGIC reserves the right to proceed with the tests without the LICENSEE
- 9.3 BUSINESS LOGIC shall use its reasonable endeavours to deliver any Software at the relevant Location on any date or dates specified in the Workshop Document. The time of delivery of the Software or component thereof shall not be of the essence of these terms provided always that BUSINESS LOGIC shall use all reasonable endeavours to complete delivery as soon as reasonably possible thereafter
- 9.4 All deliveries will be on an Ex Works basis as defined within INCOTERMS (2010). The shipment of certain deliverables under these terms including (but not limited to) software products, specifications and/or documentation may (if so elected by BUSINESS LOGIC) be made by electronic transmission from BUSINESS LOGIC to the LICENSEE and/or BUSINESS LOGIC enabling electronic access to and download by the LICENSEE. Unless otherwise specified by BUSINESS LOGIC in writing, risk of loss and damage for each individual software product will pass to the LICENSEE in accordance with the relevant INCOTERMS (2010) definition. For the avoidance of any doubt the title to any BUSINESS LOGIC software product or any tools required by BUSINESS LOGIC personnel to perform any services shall never pass to the LICENSEE and in particular any tools will be retained by BUSINESS LOGIC personnel for return to BUSINESS LOGIC upon completion of any services at the Location
- 9.5 The performance of these terms and the supply of any Software or Services may be subject to BUSINESS LOGIC obtaining all relevant export clearances, licences or exemptions and the LICENSEE obtaining all relevant import clearances or licences. Without limiting any other provision of these terms, the LICENSEE accepts that as at the date of commencement of these terms neither BUSINESS LOGIC nor any BUSINESS LOGIC Affiliate have any such clearances, licences or exemptions for delivery of Software or Services into the country of the Location. LICENSEE therefore agrees to use its best endeavours (without charge or cost to BUSINESS LOGIC) to assist BUSINESS LOGIC in any way necessary to obtain any clearances, licences or exemptions necessary for BUSINESS LOGIC to import any Software or Services into the country of the Location. The LICENSEE confirms that there are no laws or regulations of or other cause in the country of the Location that would prohibit BUSINESS LOGIC delivering the Software or Services to such country and Location

10. TESTING AND ACCEPTANCE

- 10.1 On or before the applicable date or dates specified in any Workshop Document (or as otherwise agreed), BUSINESS LOGIC shall provide to the LICENSEE test data which in the reasonable opinion of BUSINESS LOGIC is suitable to test whether any Software is materially in accordance with the agreed specification of facilities and functions to be provided by such Software together with the results expected to be achieved by processing such test data on the Software (the Test Pack). If the LICENSEE on reasonable grounds considers that the Test Pack is not suitable to test whether the Software complies with such specification, it shall notify BUSINESS LOGIC and request it to make such amendments to the Test Pack as the LICENSEE considers reasonably necessary. If the parties cannot agree the proper content of the Test Pack, the question of what is a reasonable and suitable set of test data and expected results to test the compliance of the Software with the relevant specification shall be subject to expert determination under **clause 11**
- 10.2 On the testing date specified in the Workshop Document (or as otherwise agreed), the LICENSEE and BUSINESS LOGIC shall attend acceptance tests at the relevant Location when the LICENSEE shall process the test data comprised within the Test Pack on the Software. BUSINESS LOGIC shall, if required by the LICENSEE, give the LICENSEE's personnel all reasonable assistance in processing such test data
- 10.3 The LICENSEE shall accept the Software immediately after it has correctly processed such test data by achieving the expected results. If the LICENSEE shall refuse without cause to carry out an acceptance test on an agreed testing date or any agreed re-run testing date or the LICENSEE commences live commercial production use of the Software the LICENSEE shall be deemed to have accepted the Software for all purposes under these terms. The Software shall not be deemed to have failed any acceptance test by reason of any failure to provide any facility or function not specified in the agreed specification. Following successful completion of any acceptance test the LICENSEE shall sign an acceptance certificate for such test if requested by BUSINESS LOGIC

- 10.4 If the Software shall fail to process such test data correctly, then BUSINESS LOGIC shall promptly determine whether BUSINESS LOGIC Software or the Customised Software is the cause of any such failure and if so advise the LICENSEE of such cause. If in fact the cause of the failure is a defect or error within BUSINESS LOGIC Software or Customised Software BUSINESS LOGIC shall promptly make or procure the making of such modifications or enhancements to such Software components to attempt to achieve the successful completion of the relevant acceptance test when such test is re-run which test shall be carried out on the same terms and conditions as the initial test. In such circumstances, the repeat test under this **clause 10.4** shall be carried out as soon as practicable (having regard to the remedial work that needs to be undertaken) and with all due expedition following the initial test. If the cause of any such failure is a defect or error in the Third Party Software, BUSINESS LOGIC shall use all reasonable endeavours to carry out the repeat test within a reasonable time of the initial test
- 10.5 If such repeat tests demonstrate that the Software is still not in compliance with its agreed specification in all material respects solely as a consequence of a defect or error within BUSINESS LOGIC Software or Customised Software then the LICENSEE may by written notice to BUSINESS LOGIC require BUSINESS LOGIC
- 10.5.1 first, before any right the LICENSEE may have under **clause 10.5.2** shall arise, to fix (without prejudice to the other rights and remedies the parties may have) a new date or dates for carrying out further tests on the Software on the same terms and conditions as the previous tests. If the Software shall fail such further tests solely as a consequence of a defect or error within BUSINESS LOGIC Software or Customised Software then the LICENSEE shall be entitled by written notice to BUSINESS LOGIC to require the LICENSEE and BUSINESS LOGIC to proceed under **clause 10.5.2**
- 10.5.2 to allow the LICENSEE to accept the Software subject to an abatement of the Price, such abatement to be such amount that BUSINESS LOGIC has invoiced to and been paid by the LICENSEE for any facility or functionality within BUSINESS LOGIC Software or Customised Software that is lost solely as a result of such defect or error. In such event, BUSINESS LOGIC shall not issue any further invoices with respect to the provision of such facilities or functionality, the parties shall use their respective reasonable endeavours to negotiate in good faith to agree the amount of such abatement and any support or maintenance obligation to any person BUSINESS LOGIC may have under these terms or otherwise with respect to such facility or functionality shall forthwith cease. In the absence of written agreement as to the abatement within 21 days after the date of such notice the parties shall proceed to have the issue determined as if it were a Technical Dispute (as defined in **clause 11.1**) under **clauses 11.2 and 11.3** of these terms with any meetings held up to the date of the notice served under **clause 10.5.1** being deemed to be project team meetings for the purposes of **clause 11**
- 10.6 It is anticipated that for any contract resulting from these terms there will be only one acceptance process for the Software. Any payment for Software resulting from acceptance will become due in accordance with an agreed payment schedule based upon the occasion of acceptance. For the avoidance of any doubt therefore, (i) the provisions on acceptance provided for within **clauses 10.1 to 10.5** above (including without limitation the processes and procedures contained therein) shall apply to the acceptance required for the payment due upon acceptance and (ii) should deemed acceptance occur for any Software as provided for in **clause 10.3** above, then the LICENSEE shall forthwith and without delay sign the appropriate acceptance certificate (or certificates as need be) so that the BUSINESS LOGIC can obtain payment in accordance with this agreement

11. DISPUTE RESOLUTION

Each party shall use its best endeavours to resolve amicably and expeditiously any dispute which may arise between them concerning these terms or any Statement of Work or any appendices schedules or documents incorporated by reference therein. If a dispute cannot be resolved amicably within 7 days of such dispute being notified in writing by one party to the other for the purposes of this clause then the dispute shall be determined as follows

- 11.1 If the dispute is of a technical nature concerning the interpretation of any Workshop Document, Statement of Work or relating to the functions or capabilities of the Software or any similar or related matter or that the parties agree is of a technical nature (Technical Dispute) then such dispute shall be referred to the next scheduled project team meeting or a meeting of the Project Managers and LICENSEE Contacts convened for this purpose
- 11.2 If such meeting cannot resolve a Technical Dispute to the satisfaction of both parties then the dispute will be referred as a matter of urgency to an appropriately qualified senior manager or director of each party
- 11.3 If such senior managers or directors cannot resolve a Technical Dispute within 21 days of the meeting referred to in **clause 11.1** or such other period that they may agree then the parties shall attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution at London, England (CEDR) Model Mediation Procedure (as found at www.cedr.co.uk). Unless otherwise agreed between the parties, the mediator will be nominated by CEDR and the mediation shall take place in London, England. To initiate the mediation a party must give notice in writing (ADR notice) to the other party to the dispute notifying them of a mediation pursuant to this **clause 11.3** and a copy of that notice shall be sent to CEDR. The mediation will start not later than 14 days after the date of the ADR notice. No party may commence any court proceedings or arbitration in relation to any Technical Dispute arising out of these terms until it has attempted to settle the dispute by such mediation and either the mediation has terminated or the other party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay
- 11.4 Non technical disputes shall be referred as a matter of urgency to the managing directors of each party and if they cannot resolve such dispute within 21 days of it being referred to them then the dispute shall be determined by the English Courts and the parties hereby submit to the non exclusive jurisdiction of that court for such purpose

12. CHANGE CONTROL

Where either the LICENSEE or BUSINESS LOGIC wish to change or modify any agreed Workshop Document including any Software specification agreed for the purposes of these terms or any Statement of Work or Services to be provided hereunder by BUSINESS LOGIC (a Controlled Change), the LICENSEE may at any time request, and BUSINESS LOGIC may at any time recommend, such change and propose an amendment to these terms or any Statement of Work in accordance with the formal Change Control Procedure (CCP) as set out in this **clause 12**

- 12.1 Unless the LICENSEE and BUSINESS LOGIC otherwise agree in writing there shall be no presumption that the obligations undertaken by either party in connection with these terms or under any Statement of Work if applicable which may be the subject of a Controlled Change are in any way changed until the amendment to these terms or Statement of Work has been effected in accordance with the CCP
- 12.2 Where a written request for a change is received from the LICENSEE, BUSINESS LOGIC shall, unless otherwise agreed, submit a Project Change Request form (PCR) to the LICENSEE within three weeks of receipt of the written request. A recommendation for a change by BUSINESS LOGIC shall be submitted as a PCR direct to the LICENSEE at the time of such recommendation

- 12.3 Each PCR shall contain
- 12.3.1 the originator and the date of the request or recommendation for the change
 - 12.3.2 full details of the change including any changes required to Workshop Document, Statements of Work, Software specifications, functions or facilities or to Services
 - 12.3.3 the price, if any, of the change
 - 12.3.4 a timetable for implementation together with any proposals for acceptance of the change if appropriate
 - 12.3.5 if not covered above, the impact, if any, of the change on other aspects of these terms including but not limited to
 - 12.3.5.1 any implementation or project plan
 - 12.3.5.2 fees and charges
 - 12.3.5.3 any revised payment schedule
 - 12.3.5.4 resources
 - 12.3.5.5 serviceability and performance levels
 - 12.3.5.6 system configuration
 - 12.3.5.7 throughput
 - 12.3.5.8 resilience
 - 12.3.6 the date of expiry of validity of the PCR (being not less than 10 business days from the date of the PCR)
 - 12.3.7 provision for signature by the LICENSEE and BUSINESS LOGIC
- 12.4 In the absence of any express agreement to the contrary in a PCR, BUSINESS LOGIC shall not warrant that the content or implications legal or factual of any PCR is accurate or complete, each party being responsible for its own due diligence, enquiry, analysis and determinations in relation to all matters covered by any PCR. Notwithstanding the foregoing, BUSINESS LOGIC shall prepare any PCR with all due skill and care in accordance with United Kingdom industry best practices
- 12.5 For each PCR submitted the LICENSEE shall, within the period of the validity of the PCR evaluate the PCR and as appropriate within 5 business days of receiving the PCR either
- 12.5.1 request further information or
 - 12.5.2 approve the PCR or
 - 12.5.3 notify BUSINESS LOGIC of its rejection of the PCR
- 12.6 In the event of a request for further information or rejection by the LICENSEE of the PCR under **clause 12.5**, the parties shall use their respective best endeavours to negotiate and agree an amended PCR within the original period of validity of such PCR or such other date that they may agree. In the event that the LICENSEE does not approve a PCR within the period of its validity or other agreed date, BUSINESS LOGIC shall be entitled to charge its reasonable fees and charges for preparing such PCR in response to a LICENSEE request for a change but not where the PCR originated from a BUSINESS LOGIC recommendation
- 12.7 If approved (as originally submitted or as amended), two copies of an approved PCR shall be signed by or on behalf of the LICENSEE and BUSINESS LOGIC. The signing of the PCR will signify acceptance of a formal amendment to these terms and any applicable Statement of Work by both the LICENSEE and BUSINESS LOGIC

13. READY FOR USE DATES

- 13.1 BUSINESS LOGIC shall use its reasonable endeavours to provide the Software Ready for Use on or before any dates agreed in a Workshop Document
- 13.2 If BUSINESS LOGIC shall fail to provide the Software Ready for Use by any applicable agreed date, other than as a consequence of any act or omission of the LICENSEE (whether or not such act or omission constitutes a breach of these terms) or a third party over which BUSINESS LOGIC has no control or responsibility, then BUSINESS LOGIC shall provide such resources as may be at its disposal and reasonably required in order to provide the Software Ready for Use within the shortest possible time thereafter
- 13.3 The compliance of BUSINESS LOGIC with **clause 13.2** above shall be in full and final settlement of BUSINESS LOGIC's liability for any loss or damage suffered by the LICENSEE as a result of BUSINESS LOGIC's failure to provide the Software Ready for Use by any applicable agreed date

14. FORCE MAJEURE

- 14.1 Notwithstanding anything else contained in these terms, neither party shall be liable for any delay in performing its obligations under these terms, any Workshop Document or Statement of Work if such delay is caused by circumstances beyond its reasonable control including, without limitation, any delay caused by any act or omission of the other party (whether or not such act or omission constitutes a breach of these terms) or a third party provided however that any delay by a sub-contractor or supplier of the party so delaying shall not relieve that party from liability for delay except where such delay is beyond the reasonable control of the sub-contractor or supplier concerned
- 14.2 Subject to the party which is entitled to claim the protection of **clause 14.1** (Affected Party) promptly notifying the other party in writing of the reasons for the delay (and the likely duration of the delay), the performance of the Affected Party's obligations shall be suspended during the period that the relevant circumstances persist and, if applicable to any obligation under these terms, Workshop Document or a Statement of Work, the Affected Party shall be granted an extension of time for performance equal to the period of the delay. Except where such delay is caused by the act or omission of the other party (in which event the rights, remedies and liabilities of the parties shall be those conferred and imposed by the other terms of these terms and by law) any costs arising from such delay shall be borne by the party incurring the same
- 14.3 Both parties will in any event use all reasonable endeavours to mitigate the impact of any event of force majeure and to recommence performance of their obligations under these terms as soon as reasonably possible and to set new project timelines and milestones as appropriate

15. INTELLECTUAL PROPERTY RIGHTS

- 15.1 The parties acknowledge that the copyright and all other intellectual property rights in all Third Party Software is the property of the relevant third party or its licensors and the LICENSEE shall have no rights in respect thereof save as may be granted to it in accordance with licences which it may have with such third party
- 15.2 The LICENSEE acknowledges and agrees that certain work product and software components within the Services, BUSINESS LOGIC Software and any Customised Software consists or will consist of original work and materials undertaken by BUSINESS LOGIC either previously or in performing its obligations under these terms or any Statement of Work (together with BUSINESS LOGIC Intellectual Property). For the avoidance of doubt, BUSINESS LOGIC Intellectual Property shall include, without limitation, original work specifically undertaken by BUSINESS LOGIC for the purposes of fulfilling its obligations under any agreement with the LICENSEE including developing any software functionality or code required by the LICENSEE whether or not such original work is identified under any Statement of Work, specification or other documentation. The LICENSEE acknowledges and agrees that the copyright and all other intellectual property rights in BUSINESS LOGIC Intellectual Property whenever created shall remain the exclusive property of BUSINESS LOGIC and the LICENSEE shall have no rights in respect thereof save as may be granted to it by BUSINESS LOGIC in accordance with any licence which BUSINESS LOGIC may grant to the LICENSEE from time to time
- 15.3 Notwithstanding the fact that these terms are concerned with the supply of BUSINESS LOGIC Software and Customised Software, they do not confer on or grant to LICENSEE any rights to possess or use software supplied under them. Furthermore, even if the Price(s) set out in these terms expressly and unequivocally state they include support for such software, the provision of any such support is subject to the agreement and execution by the parties of a separate agreement on software support and maintenance. In order for the LICENSEE to legally possess and use such software and to be entitled to the provision of support and maintenance for it, the parties shall forthwith upon the request of BUSINESS LOGIC enter into a software licence and support agreement in respect of BUSINESS LOGIC Software and any Customised Software in the Agreed Form. For the avoidance of any doubt, the provision of support by BUSINESS LOGIC under a separate agreement shall commence upon acceptance of Software as provided for within these terms
- 15.4 These terms are not in any way intended by either party to be an agreement concerned with the transfer of technology or classified as an agreement concerning the transfer of technology under any applicable or local law. Any reference or text within these terms that may state or imply the transfer of knowledge or the transfer of technology is included for reference purposes only and the parties agree that it shall not be used by them in any way as a reference to these terms being an agreement concerned with the transfer of technology or an agreement concerning the transfer of technology under any applicable or local law
- 15.5 Nothing contained within these terms, any other document associated with or referenced to within them, any verbal or written communication made by BUSINESS LOGIC to the LICENSEE in connection with these terms nor any subsequent contractual relationship between the Parties following on from them, shall be in any way be construed as conferring any exclusive rights on the LICENSEE relevant to (but without limitation) any and all BUSINESS LOGIC hardware or software products, services, licensing, manufacturing, assembly and/or design/development activity regardless of whether or not such matters are expressed as being part of these terms or otherwise. For the avoidance of any doubt, BUSINESS LOGIC expressly reserves without exception any and all rights relevant to the sale, re-sale, distribution, assembly, manufacture, licensing and design/development activity for BUSINESS LOGIC hardware and software products within any country and as such these terms are not intended to be any indication of any intention of BUSINESS LOGIC to appoint or authorise the LICENSEE in any way with respect to the sale, re-sale, distribution, assembly, manufacture, licensing and design/development activity of BUSINESS LOGIC hardware or software products within any country. It should be noted that third parties similarly reserve their rights as regards to their own products

16. DOCUMENTATION

- 16.1 BUSINESS LOGIC shall provide to the LICENSEE on line or in electronic or hard copy format any current training or operating manuals for the Software
- 16.2 All copyright relating to any course materials, training manuals or operating manuals for BUSINESS LOGIC Software remains the sole property of BUSINESS LOGIC and no copies of any such manuals may be made without its prior written permission

17. TRAINING

- 17.1 If applicable, BUSINESS LOGIC shall provide Training for the LICENSEE's staff
- 17.2 Any Training required by the LICENSEE shall be provided by BUSINESS LOGIC in accordance with its standard terms and scale of charges from time to time in force. The current standard terms for Training are provided for in Section 27 of these terms
- 17.3 BUSINESS LOGIC will use reasonable efforts to train the LICENSEE's employees in the subject matter of the particular training course taking into account the level of skill and competence of each of the LICENSEE's employees attending such course but does not guarantee any resultant level of competence of any of the LICENSEE's employees who attend the training. The LICENSEE will ensure that its employees using the Software are trained to a sufficient level to enable them to use it competently

18. WARRANTIES

- 18.1 BUSINESS LOGIC warrants and represents that
- 18.1.1 it has full capacity and authority to enter into and to perform these terms
- 18.1.2 it shall use good industry practices in the field of information technology to ensure that any BUSINESS LOGIC Software provided hereunder is as supplied free from viruses
- 18.1.3 it shall provide the Services with all reasonable skill and care
- 18.2 Notwithstanding any other provision of these terms, BUSINESS LOGIC shall not be liable for any amount constituting loss or damage of any kind suffered by the LICENSEE for any breach of warranties by BUSINESS LOGIC in excess of the maximum aggregate liability amount agreed by the parties and specified in **clause 22.2**

- 18.3 These express terms are in lieu of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise, all of which are excluded to the fullest extent permitted by law

19. CONFIDENTIALITY

19.1 Definition of Confidential Information and Exclusions.

"Confidential Information" means non public information that a party to these terms (öDisclosing Partyö) designates as being confidential to the party that receives such information (öReceiving Partyö) or which, under the circumstances surrounding disclosure ought to be treated as confidential by the Receiving Party and includes, without limitation, information in tangible or intangible form relating to and/or including released or unreleased Disclosing Party software or hardware products, the marketing or promotion of any Disclosing Party product, Disclosing Party's business policies, plans or practices, its personnel, customers or suppliers and information received from others that Disclosing Party is obligated to treat as confidential. If any party has any doubts about what constitutes Confidential Information then such party agrees to consult with the other party before acting in any manner that may breach its obligations under these terms

Except as otherwise indicated in these terms, the term öDisclosing Partyö also includes all Affiliates of the Disclosing Party and the term öReceiving Partyö also includes all Affiliates of the Receiving Party

Confidential Information shall not include any information, however designated, that

19.1.1 is or subsequently becomes publicly available without Receiving Party's breach of any obligation owed to Disclosing Party

19.1.2 became known to Receiving Party prior to Disclosing Party's disclosure of such information to Receiving Party pursuant to or prior to or in contemplation of these terms

19.1.3 became known to Receiving Party from a source other than Disclosing Party other than by the breach of an obligation of confidentiality owed to Disclosing Party

19.1.4 is independently developed by Receiving Party without use of Disclosing Party's Confidential Information or

19.1.5 constitutes Suggestions (as defined in **clause 19.5** of these terms)

19.2 Obligations Regarding Confidential Information.

Receiving Party shall

19.2.1 refrain from disclosing any Confidential Information of the Disclosing Party to third parties for ten (10) years following the date that Disclosing Party first discloses such Confidential Information to Receiving Party

19.2.2 take reasonable security precautions, at least as great as the precautions it takes to protect its own confidential information, but no less than reasonable care, to keep confidential the Confidential Information of the Disclosing Party and shall procure that all of its directors, employees, professional advisers and sub-contractors who have access to any information of the Disclosing Party to which the obligations of **clause 19** apply shall be made aware of those obligations

19.2.3 not disclose any Confidential Information to its sub-contractors without first obtaining their written agreement to confidentiality obligations no less onerous than those set out in this **clause 19**

19.2.4 refrain from disclosing, reproducing, summarizing and/or distributing Confidential Information of the Disclosing Party except as expressly provided hereunder and

19.2.5 refrain from reverse engineering, decompiling or disassembling any software code and/or pre-release hardware devices disclosed by Disclosing Party to Receiving Party under these terms, except as expressly permitted by applicable law of a mandatory nature

Receiving Party may disclose Confidential Information of Disclosing Party in accordance with a judicial or other governmental order, provided that Receiving Party either

19.2.6 gives the Disclosing Party reasonable notice prior to such disclosure to allow Disclosing Party a reasonable opportunity to seek a protective order or equivalent, or

19.2.7 obtains written assurance from the applicable judicial or governmental entity that it will afford the Confidential Information the highest level of protection afforded under applicable law or regulation. Notwithstanding the foregoing, the Receiving Party shall not disclose any computer source code that contains Confidential Information of the Disclosing Party in accordance with a judicial or other governmental order unless it complies with the requirement set forth in **clause 19.2.6**

Receiving Party may disclose Confidential Information only to Receiving Party's employees and consultants on a need-to-know basis. The Receiving Party will have executed or shall execute appropriate written agreements with third parties sufficient to enable Receiving Party to enforce all the provisions of this **clause 19**

Receiving Party shall notify the Disclosing Party immediately upon discovery of any unauthorized use or disclosure of Confidential Information or any other breach of this **clause 19** by Receiving Party and its employees and consultants, and will cooperate with Disclosing Party in every reasonable way to help Disclosing Party regain possession of the Confidential Information and prevent its further unauthorized use or disclosure

Upon termination of these terms for any reason, Receiving Party shall, at Disclosing Party's request, return all originals, copies, reproductions and summaries of Confidential Information and all other tangible materials and devices provided to the Receiving Party as Confidential Information, or at Disclosing Party's option, certify destruction of the same

19.3 Remedies.

The parties acknowledge that monetary damages may not be a sufficient remedy for unauthorized disclosure of Confidential Information and that Disclosing Party shall be entitled, without waiving any other rights or remedies, to such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction

19.4 Miscellaneous.

All Confidential Information is and shall remain the property of Disclosing Party. By disclosing Confidential Information to Receiving Party, Disclosing Party does not grant any express or implied right to Receiving Party to or under any patents, copyrights, trademarks, or trade secret information except as otherwise provided herein. Disclosing Party reserves without prejudice the ability to protect its rights under any such patents, copyrights, trademarks, or trade secrets except as otherwise provided herein

The parties agree to comply with all applicable international and national laws that apply to any Confidential Information or any product (or any part thereof), process or service that is the direct product of the Confidential Information

The terms of confidentiality under these terms shall not be construed to limit either the Disclosing Party or the Receiving Party's right to independently develop or acquire products without use of the other party's Confidential Information

If either Disclosing Party or the Receiving Party employs attorneys to enforce any rights arising out of or relating to these terms, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs

19.5 Suggestions.

The LICENSEE may from time to time provide suggestions, comments or other feedback ("Suggestions") to BUSINESS LOGIC with respect to Confidential Information provided originally by BUSINESS LOGIC. Both parties agree that all Suggestions are and shall be given entirely voluntarily. Suggestions, even if designated as confidential by the LICENSEE, shall not, absent a separate written agreement, create any confidentiality obligation for BUSINESS LOGIC. Furthermore, except as otherwise provided herein or in a separate subsequent written agreement between the parties, BUSINESS LOGIC shall be free to use, disclose, reproduce, license or otherwise distribute, and exploit the Suggestions provided to it as it sees fit, entirely without obligation or restriction of any kind on account of intellectual property rights or otherwise

20. DATA PROTECTION

- 20.1 For the purposes of this clause "Data", "Processing", "Personal Data", "sensitive personal data" and "Information Commissioner" bear the meanings set out in the DPA and "DPA" means the Data Protection Act 1984 and the Data Protection Act 1998 as the same are for the time being in force and includes any subordinate legislation made under such Acts and any provision amending, superseding or re-enacting them
- 20.2 The LICENSEE acknowledges that in connection with the performance of its obligations under these terms BUSINESS LOGIC may carry out Processing on Personal Data and sensitive personal data of the LICENSEE. BUSINESS LOGIC shall use its best endeavours to carry out such operations in compliance with any applicable data protection legislation in force from time to time, and shall, without limitation to the foregoing
- 20.2.1 take appropriate technical and organisational measures against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data
- 20.2.2 only disclose Personal Data or information extracted from such data to third parties with the prior written approval of the LICENSEE, subject to any non-disclosure exemptions allowed by applicable law
- 20.2.3 in the event that BUSINESS LOGIC receives a request for subject access from an individual about whom BUSINESS LOGIC holds Personal Data for the purposes of fulfilling its obligations under these terms then, subject to complying with its obligations under applicable law, BUSINESS LOGIC shall promptly notify such employee of the LICENSEE as is nominated for this purpose of such request and respond promptly to any request for information made by the LICENSEE in respect of such subject access request
- 20.3 The LICENSEE acknowledges that it is solely responsible for the creation of all Personal Data upon which BUSINESS LOGIC carries out processing of Personal Data under these terms. The LICENSEE shall make obtain and maintain all necessary notifications authorisations and consents the LICENSEE is required to have for the processing of Personal Data to be carried out by BUSINESS LOGIC under these terms. BUSINESS LOGIC acknowledges that Personal Data in the possession of BUSINESS LOGIC shall at all times remain the property of the LICENSEE
- 20.4 The LICENSEE hereby instructs BUSINESS LOGIC to carry out such Processing on Personal Data as is reasonably required by BUSINESS LOGIC to perform its obligations under these terms. The LICENSEE may vary the instruction given by this **clause 20.4** with respect to the processing of Personal Data at any time by written notice to BUSINESS LOGIC provided that BUSINESS LOGIC shall have no liability of any kind to the LICENSEE for any loss or damage suffered by or claim made by any person against the LICENSEE arising directly or indirectly from BUSINESS LOGIC complying with such notice

21. TERMINATION

- 21.1 Either party may terminate these terms forthwith by written notice to the other if
- 21.1.1 the other party shall have a receiver or administrative receiver appointed or shall pass a resolution for winding-up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction shall make an order to that effect or if the other party shall become subject to an administration order (or have an administrator appointed) or shall enter into any voluntary arrangement with its creditors or shall cease or threaten to cease to carry on business
- 21.1.2 the other party commits any breach of any provision of these terms which is capable of remedy (including for the avoidance of doubt any breach referred to in **clause 21.1.3**) and that other party fails to remedy the breach within 30 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied
- 21.1.3 the other party commits any breach of any provision of these terms which constitutes a material breach (material breach for this purpose meaning a breach that has caused or, with the passage of time, will cause substantial harm to the interests of the aggrieved party or if it involves knowing and unauthorised infringement of the aggrieved party's intellectual property, or if it involves knowing or grossly negligent unauthorised disclosure or use of the aggrieved party's confidential information, or if it involves a continuing failure after warning to pay any undisputed fees when due, or if the aggregate effect of non-material breaches by the same party satisfies these standards for materiality)
- 21.2 Any termination of these terms (howsoever occasioned) shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision of these terms which is expressly or by implication intended to come into or continue in force on or after such termination

22. LIABILITY LIMITATIONS

- 22.1 Each party's liability to the other
- 22.1.1 for the injury to or death of any person caused by any negligent act or omission or wilful misconduct of that party, its employees, agents or contractors shall not be limited
 - 22.1.2 for fraud shall not be limited
 - 22.1.3 for damage to tangible property under these terms shall be limited to £2,000,000 (two million pounds) in respect of any one event or series of occurrences connected with one event
- 22.2 Except in respect of the types of liability referred to in **clause 22.1** above, the maximum aggregate total liability of each party in respect of any and all contractual breaches or representations, statements or tortious acts or omissions arising out of or in connection with these terms shall not exceed a sum equal to the price paid by the LICENSEE for BUSINESS LOGIC Software, Customised Software and Services. Each party releases the other from all obligations, liabilities, claims or demands in excess of the limitations set out in this **clause 22**. The parties acknowledge that other parts of these terms rely upon the inclusion of this **clause 22** and the resulting allocation of risk
- 22.3 Notwithstanding anything else contained in these terms, neither party shall be liable to the other for any loss of profits or revenue, business interruption or loss of business information, goodwill or any type of special, indirect, incidental, consequential, exemplary or punitive damages whether arising from failure to meet any duty owed to any person including of good faith, reasonable care or negligence, strict liability, breach of contract or misrepresentation or otherwise howsoever arising (including loss or damage suffered by the other as a result of any action brought by a third party) even if such loss was reasonably foreseeable or a party has been advised of the possibility of such loss or damage in advance

23. NON SOLICITATION

During the period during which BUSINESS LOGIC is providing the Services and for a period of 9 months thereafter neither party shall (whether personally or by its agent and whether for itself or on behalf of any other person, firm or company) recruit, solicit, induce or seek to induce any employee or contractor of the other party involved in the performance of the Services or obligations under these terms to leave its employment or terminate or breach its contract with such other party, provided however, that neither party will be precluded from engaging in general recruiting techniques that do not target the employees of the other party and from employing any person responding to such general solicitation. In the event that a party is in breach of this **clause 23** it shall pay to the party which has suffered loss as a result of such breach (the 'innocent party'), by way of a genuine pre-estimate of the innocent party's damages, a sum calculated at the total aggregate value of fees, salary and other benefits paid to the employee or contractor concerned by the innocent party during the last 6 months of such employee's employment or contractor's engagement with the innocent party

24. GENERAL

- 24.1 Neither party may assign, transfer or otherwise dispose of any of its rights or obligations under these terms without the prior written consent of the other, such consent not to be unreasonably withheld or delayed. Each party shall remain primarily liable to the other in respect of any act or omission of any sub-contractors as if any act or omission were its own
- 24.2 Neither of the parties has been induced to enter into these terms by a statement or promise which it does not contain. These terms and the contractual provisions in any applicable Workshop Document constitute the entire agreement between BUSINESS LOGIC and the LICENSEE with respect to the supply of Software and other services provided under them and supersedes all previous communications, representations and agreements either written or oral (save for fraudulent misrepresentation) with respect thereto. This shall not exclude any liability which a party would otherwise have to the other party in respect of any statement made fraudulently by that party prior to the date of commencement of these terms
- 24.3 Any variation of these terms must be in writing, and signed by an authorised representative of each of the parties. No term or provision hereof will be deemed waived and no breach excused unless such waiver or consent will be in writing and signed by the party whose waiver or consent is required
- 24.4 Each provision of these terms shall be construed separately and notwithstanding that the whole or any part of any such provision may be held by any body of competent jurisdiction to be illegal invalid or unenforceable the other provisions of these terms and the remainder of the provision in question shall continue in full force and effect. The parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic legal and commercial objectives of the invalid or unenforceable provision
- 24.5 The parties confirm their intent not to confer any rights on any third parties by virtue of these terms and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to them
- 24.6 These terms and the contractual provisions in any Workshop Document shall be governed by and construed in accordance with English law and the parties submit to the non-exclusive jurisdiction of the English courts. If these terms are written in English and any other language the English language version shall take precedence and shall govern the construction and operation of the agreement between the parties and in any dispute. Any other language version of these terms (whether required by LICENSEE related policies or purposes, local courts, local law or for any other reason) shall be for information purposes only. Both parties acknowledge that they have mastered the English language and fully understand these terms and their content
- 24.7 The LICENSEE agrees that BUSINESS LOGIC may refer to the LICENSEE as a client of BUSINESS LOGIC and as a user of Software in BUSINESS LOGIC marketing and public relations material. BUSINESS LOGIC shall not publish any such references without first giving the LICENSEE an opportunity to review and comment on them. In addition, if requested by BUSINESS LOGIC, the LICENSEE will assist BUSINESS LOGIC in the production of a case study for marketing purposes concerning, amongst other things, the implications for the LICENSEE and its business from implementing any Software provided by BUSINESS LOGIC under these terms. For the avoidance of doubt, this **clause 24.7** does not give either party the right to disclose Confidential Information

25. NOTICES

- 25.1 Any document notice claim or demand to be given served or made by either party to the other in connection with these terms shall be sufficiently given served or made by delivering or sending the same by hand or courier, pre-paid first class recorded delivery or registered air mail post, facsimile or email to the registered office or the aforesaid address of the party to whom it is addressed
- 25.2 Any such document notice claim or demand shall be deemed to be given served or made
- 25.2.1 if delivered, at the time of delivery
 - 25.2.2 if sent by courier, at the expiration of 12 hours of the same having been despatched
 - 25.2.3 if posted, at the expiration of 2 days after the envelope containing the same shall have been posted
 - 25.2.4 if sent by facsimile, upon completion of transmission
 - 25.2.5 if sent by email, upon completion of transmission if confirmed by one of the other means of service referred to above

26. EXPORT ADMINISTRATION AND ANTI CORRUPTION

- 26.1 General Assurance of Compliance with Trade Controls. The parties acknowledge that these terms may be subject to the export, import and other trade-related laws and regulations including those of the United States and other national governments and agree to comply with such laws and regulations where applicable. Under no circumstances will BUSINESS LOGIC provide any statements or certifications in support of restrictive trade practices or boycotts
- 26.2 Government. If the LICENSEE is acting on behalf of any unit or agency of the United States Government, the following provisions apply
- 26.2.1 any products the LICENSEE acquires under these terms for or on behalf of the United States Government are provided to the United States of America with RESTRICTED RIGHTS. Use, duplication, or disclosure by the U.S. Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.277-7013 and paragraph (d) of the Commercial Computer Software Restricted Rights clause at FAR 52.227-19
 - 26.2.2 BUSINESS LOGIC grants the LICENSEE the right to transfer Software to the United States Government subject to the following restrictions: with the exception of the Department of Defence, you will not distribute Software to the United States of America except on terms at least as restrictive as those set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 and paragraph (d) of the Commercial Computer Software Restricted Rights clause at FAR 52.227-19, and in compliance with particular department or agency acquisition regulations that provide BUSINESS LOGIC protection at least equivalent to that provided by the above-referenced DFARS and FAR provisions
 - 26.2.3 the LICENSEE shall not export, release or transfer including but not limited to visual inspection (reading or viewing), oral exchange (discussion), by any means or method, (from one country to another or via intermediate country or from a national of a country to a national of a different country) any restricted technical data and technical assistance, the direct product of such restricted technical data and technical assistance, software or the source code for such software, obtained by the LICENSEE from BUSINESS LOGIC to any entity or person identified as group D:1, E-1 and E-2, in Supplement No. 1 to Part 740 of the U.S. Export Administration Regulations (see Internet <http://w3.access.gpo.gov/bis/ear/pdf/740spir.pdf>), without having first obtained any required government authorization
- 26.3 Anti-Corruption. BUSINESS LOGIC advises the LICENSEE that the UK Bribery Act 2010 (UKBA) amongst other offences, prohibits the offer, promise or giving of a financial or other advantage to any person to induce that person to perform improperly anywhere in the world any function or activity of a public nature, or connected with a business, trade or profession or performed in the course of a person's employment or by or on behalf of a company or other body. A person will be performing such an activity or function improperly where they breach an expectation to perform in good faith or to perform impartially or they breach a position of trust in connection with performing, or if the failure to perform at all is such a breach. In determining what would be a breach of trust, for instance, the legal standards that are applicable in the United Kingdom will apply and where no such legal standards exist, local customs or practices in a foreign jurisdiction will only be applicable if they are permitted or required by the written law (as defined by the UKBA) of such jurisdiction. A person who requests or accepts a financial or other advantage intending that a relevant function or activity will be performed improperly is also committing an offence. In addition, it is an offence under the UKBA for any person to directly or indirectly influence a public official of a foreign country or public international organisation in their official capacity with a bribe if the bribe is intended to obtain or retain business or an advantage in the conduct of business. A bribe for this purpose may be any offer, promise or giving of a financial or other advantage to any such public official or to another at that official's request or acquiescence where the official is not permitted or required by the written law or rules of the relevant jurisdiction or organisation to be so influenced. The LICENSEE agrees that it will not take or fail to take any action where any such act or failure to act would cause BUSINESS LOGIC to be in violation of the UKBA or any other applicable anti-corruption convention, law or regulation and undertakes to duly notify BUSINESS LOGIC if it becomes aware of any such violation by it or its Affiliates and to indemnify BUSINESS LOGIC for any losses, damages, fines, penalties whatsoever which BUSINESS LOGIC may suffer or incur arising out of or incidental to any such violation. In case of breach of the above, BUSINESS LOGIC may suspend or terminate these terms at any time without notice or indemnity
- 26.4 Material Conditions. It is agreed between the parties that the statements made in the provisions of this **clause 26** Export Administration and Anti Corruption are material conditions for the purposes of these terms. The LICENSEE shall ensure that in any supply chain environment their customer is and/or other subcontractors are fully aware of and understand that they must comply with the provisions of this **clause 26** Export Administration and Anti Corruption

27. CURRENT STANDARD TRAINING TERMS

In addition to any other requirements as may be specified by BUSINESS LOGIC, the following current standard training terms will apply to any Training being provided by BUSINESS LOGIC to the LICENSEE:

- 27.1 All training will be given in English and based upon training materials also in English. The LICENSEE will provide a suitably qualified translator for the ad-hoc translation into the local language of training provided by the English tutor/instructor. The translator provided by the LICENSEE will attend all training sessions.

- 27.2 The training that has been priced by BUSINESS LOGIC as part of this agreement is based upon a maximum number of training courses and classroom based training sessions. The maximum number of training courses and training sessions will be as defined in the above table or by BUSINESS LOGIC under cover of a separate written communication.
- 27.3 Each training session will be subject to a maximum number of attendees. The maximum number of LICENSEE personnel who can attend any given training session will be defined in the above table or by BUSINESS LOGIC under cover of a separate written communication.
- 27.4 The training to be provided by BUSINESS LOGIC is subject to a maximum number of personnel that can be selected and/or nominated by LICENSEE for training. This will be defined in the above table or by BUSINESS LOGIC under cover of a separate written communication.
- 27.5 Each training session will be of no more than 1 normal business day in duration.
- 27.6 Unless otherwise specified in writing within the above table, the general location where all training sessions will take place will be selected by BUSINESS LOGIC and made the subject of a separate written communication.
- 27.7 The number of consecutive working days or weeks over which all training courses and training sessions will be equally spread will be defined within the above table or by BUSINESS LOGIC under cover of a separate written communication.
- 27.8 The actual date of all training courses and training sessions shall be scheduled by mutual written agreement between LICENSEE and BUSINESS LOGIC so that all such training will have been completed within the planned duration of the project and in any event no later than the date planned for acceptance.
- 27.9 Training courses and sessions will be scheduled on normal business days Monday to Friday, during normal business hours and in any event between 9.30 am and 5.00 pm. Training sessions planned to last a normal business day shall include a minimum of 1 hour for lunch and a minimum of two 20 minute breaks during the morning and the afternoon. Training sessions planned to last only a morning or an afternoon shall include a minimum of two 20 minute breaks.
- 27.10 It will be the responsibility of the LICENSEE to promote, screen, select and/or nominate the personnel who will attend the training and also to keep complete and accurate records (including those records relevant to attendance) of those personnel selected and/or nominated by the LICENSEE for training.
- 27.11 It is the sole and exclusive responsibility of the LICENSEE to select the best personnel for training so as to ensure (a) satisfactory results and (b) an adequate transfer of knowledge. As a guide only and in order to try and assist the LICENSEE personnel to be selected by LICENSEE to attend the training must not only meet the minimum requirements defined in 11. below but also any minimum requirements defined either (i) within the above table or (ii) by BUSINESS LOGIC under cover of a separate written communication.
- 27.12 All personnel attending training courses must (as a minimum) have strong communication skills (preferably in written and oral English) as well as a thorough working knowledge and prior professional experience in (a) the Microsoft[™] Windows operating environment and the Microsoft[™] office suite of applications (including but not necessarily limited to Word[™], Excel[™] and PowerPoint[™]).
- 27.13 The same personnel must attend all the training sessions necessary to complete any given training course.
- 27.14 Partial completion of the training or the partial/incomplete attendance of personnel on any training course or at any training sessions of the training shall not be compensated by a reduction in the price payable by LICENSEE for training.
- 27.15 Personnel selected and/or nominated by LICENSEE to attend training who (for wholly acceptable and understandable reasons) are unable to attend the training course/session they have been selected and/or nominated for, may be replaced by LICENSEE with another suitable person provided always that such replacement takes place prior to the commencement of the first training session of the training course. All records maintained by LICENSEE will be updated accordingly.
- 27.16 BUSINESS LOGIC's obligations regarding training are strictly limited to the provision of (i) a duly qualified instructor/tutor (ii) the overnight accommodation for BUSINESS LOGIC personnel at the agreed location where Training will be provided. and (iii) the specific training materials/documentation (In English) necessary for the tutor/instructor to give the training.
- 27.17 At least 1 working week prior to the commencement of any training at the agreed location, LICENSEE will have located and prepared (free of charge to BUSINESS LOGIC and at the general location selected and agreed by BUSINESS LOGIC) an adequate air conditioned classroom complete with all necessary classroom equipment, including without limitation PCs (with connections to the LICENSEE's network if needed), tables, chairs, whiteboards or blackboards, flip charts, projectors, paper, pencils, erasers and any other similar material or equipment required for the training and the LICENSEE personnel to undertake the training.
- 27.18 The full and total cost and expense of sending any LICENSEE personnel for training (including but not necessarily limited to any travel, accommodation, daily expenses (for example food and drink) and any other allowances) shall be for the account of and borne by LICENSEE as appropriate.
- 27.19 When training is being provided by BUSINESS LOGIC at its training facilities in Cluj, Romania, BUSINESS LOGIC shall (and without prejudice to 27.18) provide assistance with planning (i) reasonable and suitable overnight accommodation in Cluj, Romania and (ii) transfers between the overnight accommodation and BUSINESS LOGIC's training facilities. BUSINESS LOGIC shall only be required to provide assistance with planning reasonable and suitable overnight accommodation (i) for LICENSEE personnel only (ii) relevant to the number of LICENSEE personnel actually attending the training (ii) commensurate with the number of training sessions planned and (iii) for accommodation that includes breakfast if available together with the overnight accommodation rate.
- 27.20 Training and sessions (once planned and agreed) shall not be subject to cancellation or postponement unless agreed between BUSINESS LOGIC and LICENSEE in writing a minimum of 24 hours prior to the date/time originally planned for the training or session to commence.
- 27.21 Should the same training be planned to take place on more than one occasion, then the price included in this agreement for training assumes that suitable LICENSEE personnel who took part on earlier training sessions will be available to assist in the training by taking part in later training sessions. If not already stated within this agreement, BUSINESS LOGIC will write to LICENSEE (under cover of a separate communication if the training has been priced based upon the concept of "train the trainer" and so BUSINESS LOGIC trainers may not necessarily be present at all training sessions.
- 27.22 BUSINESS LOGIC may reasonably refuse (i) to accept any persons or individual on a training course or for a training session who does not meet the standards required by BUSINESS LOGIC and (ii) any persons or individual admission to a training course and/or training session in circumstances where BUSINESS LOGIC considers the persons or individual to be a safety or security risk to other training course/training session participants or the premises where the training course/training session is being held.

28. CURRENT STANDARD LETTER OF CREDIT TERMS

In addition to any other requirements as may be specified by BUSINESS LOGIC, the following standard letter for credit terms will apply to the issue, establishment, amendment and confirmation of any letter of credit requirements between BUSINESS LOGIC and the LICENSEE:

- 28.1 Payments by LICENSEE to BUSINESS LOGIC will be made through a confirmed, irrevocable, non-transferable letter of credit.
- 28.2 The Letter of Credit will be for a total value specified by BUSINESS LOGIC and in Pounds Sterling (£) unless otherwise agreed by BUSINESS LOGIC. The Letter of Credit will provide for payments to be made as agreed by BUSINESS LOGIC.
- 28.3 Payments will be made under the Letter of Credit at sight upon presentation of the BUSINESS LOGIC's commercial invoice referencing the payment due (in four folds duly stamped) together with a bill of exchange and any other support documentation agreed by BUSINESS LOGIC.
- 28.5 The Letter of Credit is to be advised by and restricted to: HSBC Bank PLC, Manchester Trade Services Centre, SWIFT: MIDLGB22.
- 28.6 The Letter of Credit is to be established in favour of: Business Logic Systems Limited, Buckingham House, West Street, Newbury, Berkshire, RG14 1BE, United Kingdom.
- 28.7 Wherever possible, the issuing Bank used to arrange the Letter of Credit will be an office of the HSBC Group as this will assist in the speed and smooth operation of the transaction.
- 28.8 The LICENSEE will present a request to the issuing bank for the Letter of Credit in the form agreed with BUSINESS LOGIC.
- 28.9 The Letter of Credit must be available in the United Kingdom.
- 28.10 The Letter of Credit will be in English and allow for documentation to be presented in English.
- 28.11 Any Letter of Credit is subject to acceptance by BUSINESS.
- 28.12 The Letter of Credit will allow for partial shipments and transshipments against all deliverables, with the latest shipment date being agreed with BUSINESS LOGIC allowing for the full delivery term of the project plus a minimum period of sixty (60) calendar days.
- 28.13 The Letter of Credit will allow for partial payments against all deliverables.
- 28.14 The presentation period against the Letter of Credit will be agreed with BUSINESS LOGIC allowing for a minimum of ninety (90) calendar days and the Letter of Credit will allow for payments against stale documents.
- 28.15 The Letter of Credit will allow for document presentations and payments to be made at any time during its validity.
- 28.16 The Letter of Credit will be established and confirmed within fourteen (14) calendar days of agreement between BUSINESS LOGIC and LICENSEE as to the specific terms of the Letter of Credit.
- 28.17 The Letter of Credit can only be amended upon agreement with BUSINESS LOGIC.
- 28.18 Payments against any Letter of Credit will be available at sight immediately after presentation by BUSINESS LOGIC of the documents against the letter of credit.
- 28.19 All banking charges outside of the UK incurred in the establishment, management and if necessary amendment of any Letters of Credit will be for the LICENSEE's account.
- 28.20 The validity period of any Letter of Credit will be agreed with BUSINESS LOGIC and will be for the full term of any project, plus a minimum period of ninety (90) calendar days.
- 28.21 Requests by LICENSEE to the issuing bank for an amendment to an existing Letter of Credit will only be submitted once such amendment requests have been agreed by BUSINESS LOGIC;
- 28.22 Requests by LICENSEE to an issuing bank for any additional/new Letters of Credit as may be necessary during the life of a project will only be submitted once such amendment requests have been agreed by BUSINESS LOGIC;
- 28.23 With respect to the issue, establishment and confirmation of any Letters of Credit, additional/new Letters of Credit or any amendments thereof, the LICENSEE understands and accepts that the requirements and obligations of BUSINESS LOGIC shall not commence or be undertaken by BUSINESS LOGIC until the Letter of Credit and/or amendment thereof has been established in accordance with the requirements and duly confirmed by BUSINESS LOGIC's appointed bank.
- 28.24 Delivery for the purposes of any Letter of Credit shall mean Ex Works as defined within INCOTERMS (2010). Unless otherwise specified by Supplier in writing, risk of loss and damage for each individual item delivered will pass to Systems Integrator in accordance with the relevant INCOTERMS (2010) definition.

28. CURRENT STANDARD SUPPORT TERMS

When providing services that are support in nature then the following terms will also apply to those already provided for above, with any conflict resolved by reference to these support terms

1. DEFINITIONS

- 1.1 "Commencement Date" means the date specified in the agreement between BUSINESS LOGIC and LICENSEE or the date the Software is first installed on the LICENSEE's server or any commercial production use of the Software by or on behalf of the LICENSEE commences, whichever is the earlier
- 1.2 "Configuration" means to configure the operation of the Software pursuant to **clause 4** to perform certain predetermined functions offered by the Software or to cause the Software to manipulate or operate with certain third party software products as required by the LICENSEE
- 1.3 "Disabling Event" means one or more of the events set out in **paragraph 4 of clause 14** or any failure by the LICENSEE to perform its obligations set out in **paragraph 3 of clause 14**
- 1.4 "Licensed Material" means the latest version from time to time of any user manuals, agreed final specifications of any Configuration or customisation carried out by BUSINESS LOGIC or an accredited BUSINESS LOGIC Partner pursuant to **clause 4** and the standard Software functionality description made available by BUSINESS LOGIC from time to time in printed or electronic form
- 1.5 "Program Error" means faults in the Software which materially adversely affect the Specified Functionality

- 1.6 "Software" means the BUSINESS LOGIC software applications and processes supplied to the LICENSEE by BUSINESS LOGIC or an accredited BUSINESS LOGIC Partner as specified in the relevant license agreement and any updates, Upgrades, supplements, add-on components or customised or replacement software supplied to the LICENSEE by BUSINESS LOGIC or an accredited BUSINESS LOGIC Partner with respect to such software
- 1.7 "Specified Functionality" means the functionality of the Software described in the Licensed Material
- 1.8 "Subscription Period" means the period specified in the agreement between BUSINESS LOGIC and LICENSEE or any other period in respect of which a Support Scheme Fee has been paid or agreed unconditionally to be paid by the LICENSEE
- 1.9 "Support Renewal Date" means any date being the first day of any Subscription Period, including any such date specified in the agreement between BUSINESS LOGIC and LICENSEE, upon which the LICENSEE's Support Scheme shall be due for renewal
- 1.10 "Support Scheme" means the Software support and maintenance described in **clause 5**
- 1.11 "Support Scheme Fee" means BUSINESS LOGIC's standard charge from time to time for the provision of the Support Scheme payable by the LICENSEE to BUSINESS LOGIC in advance of any Subscription Period and, if applicable, calculated on a daily pro-rata basis with respect to the period from the Commencement Date to (but not including) the first Support Renewal Date
- 1.12 "Upgrade" means a new release within a version of the Software which shall be designated by a higher sequential number following the decimal place in the numeric descriptor for such version and which generally will contain enhanced functionality and/or permanent fixes but shall not include a replacement version (which shall be designated by a higher sequential number preceding the decimal place in the numeric descriptor for such version)
- 1.13 "Work Arounds" means programming or work process which allows the Software to meet the Specified Functionality without necessarily eliminating a Program Error
- 1.14 "Data", "Processing", "Personal Data" and "Information Commissioner" bear the meanings set out in the DPA
- 1.15 "DPA" means the Data Protection Act 1984 and the Data Protection Act 1998 as the same are for the time being in force and includes any subordinate legislation made under such Acts and any provision amending, superseding or re-enacting them

2. FEES

- 2.1 Unless otherwise stated or agreed all Support Scheme Fees are payable in Pounds Sterling £ and in advance of the Subscription Period to which they relate. Invoices with respect to any period either being or comprising part of a Subscription Period will be issued as near as practicable to one calendar month prior to the commencement of such period. Any other services BUSINESS LOGIC may agree to provide to the LICENSEE under these terms shall be invoiced when delivered or on a monthly basis, at the discretion of BUSINESS LOGIC
- 2.2 Intentionally Blank
- 2.3 Intentionally Blank
- 2.4 The LICENSEE acknowledges and agrees that if any invoice is not paid on the due payment date then BUSINESS LOGIC shall be under no obligation to provide the Support Scheme or other services to the LICENSEE under these terms such obligations being suspended (without prejudice to BUSINESS LOGIC's rights under **clause 6**) unless and until the relevant invoice shall be paid in full
- 2.5 Intentionally Blank

3. TRAINING AND OTHER SERVICES

- 3.1 If requested by LICENSEE, BUSINESS LOGIC may at its normal fees and charges from time to time provide training courses in the use of the Software and other agreed services
- 3.2 BUSINESS LOGIC will use reasonable efforts to train the LICENSEE's nominated employees in the subject matter of a particular training course taking into account the level of skill and competence of each attending trainee but does not guarantee any resultant level of competence of any such trainee
- 3.3 The LICENSEE will ensure that its employees using the Software are trained to a sufficient level to enable them to use it competently
- 3.4 Once a date for training an employee or for the provision of services has been agreed by the LICENSEE and BUSINESS LOGIC then both parties will take all reasonable steps to prevent that date being cancelled or postponed. In the event that the date for a course or for the provision of services is cancelled or postponed by the LICENSEE for any reason the following charges shall apply
- 3.4.1 if the course or provision of services is cancelled or postponed within 5 working days of the agreed date there will be payable by the LICENSEE a charge calculated at 100% of the course fees or BUSINESS LOGIC's fees otherwise chargeable for the services on that date
- 3.4.2 if the course or provision of services is cancelled within 15 working days of the agreed date there will be payable by the LICENSEE a charge calculated at 50% of the course fees or BUSINESS LOGIC's fees otherwise chargeable for the services on that date
- 3.4.3 if the course or provision of services is cancelled within 25 working days of the agreed date there will be payable by the LICENSEE a charge calculated at 25% of the course fees or BUSINESS LOGIC's fees otherwise chargeable for the services on that date
- 3.5 BUSINESS LOGIC reserves the right to cancel or postpone any course or provision of services in the event of circumstances beyond its control, in which case its liability will be limited to refunding any fees paid in respect of the delivery of that course or the services on that date

4. CONFIGURATION

- 4.1 If requested by LICENSEE, BUSINESS LOGIC may agree to configure and/or customise the Software to the LICENSEE's specific and reasonable requirements. Any Configuration or customisation of Software by BUSINESS LOGIC in accordance with this **clause 4** will become part of the Software and will continue to be subject to all the terms of these terms. BUSINESS LOGIC shall be entitled to charge its usual fees and charges from time to time for such Configuration or customisation services
- 4.2 Following such training as may be specified by BUSINESS LOGIC trained employees or sub-contractors of the LICENSEE may configure the Software in accordance with such procedures as are specified from time to time for such Software by BUSINESS LOGIC

5. SUPPORT AND MAINTENANCE

- 5.1 BUSINESS LOGIC shall provide the Support Scheme to the LICENSEE with respect to the Software from the Commencement Date for such Subscription Periods in respect of which the applicable agreed fee has been paid in advance by the LICENSEE to BUSINESS LOGIC. For the avoidance of doubt, in the event that LICENSEE has paid the applicable agreed fee with respect to any Subscription Period to an accredited BUSINESS LOGIC Partner then unless otherwise agreed with BUSINESS LOGIC that BUSINESS LOGIC Partner and not BUSINESS LOGIC shall be responsible to provide the Support Scheme to the LICENSEE for that period under a separate agreement between that BUSINESS LOGIC Partner and the LICENSEE
- 5.2 Subject to these terms of , the Support Scheme shall comprise the level 2 services and facilities set out in **paragraphs 14.2, 14.3 and 14.4 of clause 14** at any time during which BUSINESS LOGIC shall have appointed, with the consent of the LICENSEE, an accredited BUSINESS LOGIC Partner to provide level 1 services and facilities to the LICENSEE as set out in **paragraph 14.1 of clause 14** and at all other times the Support Scheme shall comprise the services and facilities set out in **clause 14**
- 5.3 The Support Scheme specifically shall not comprise the following services and facilities
- 5.3.1 an advisory and explanatory service to users of the Software who have not attended the appropriate level of training or who have not adequately reviewed the Licensed Materials, FAQ's release notes, knowledge base and other information materials provided by BUSINESS LOGIC or an accredited BUSINESS LOGIC Partner from time to time
 - 5.3.2 modifications to the Software (including but not limited to additional reports) carried out by BUSINESS LOGIC other than modifications which may be necessary or carried out under the Support Scheme
 - 5.3.3 unless otherwise agreed by BUSINESS LOGIC, travel to and attendance at any LICENSEE premises to provide Support Scheme services
- 5.4 The LICENSEE will provide such access to the Software if necessary at the LICENSEE's premises and shall provide such other facilities at such premises during the periods specified in **clause 5.2.1** as BUSINESS LOGIC reasonably requires to provide services under the Support Scheme. The LICENSEE shall comply with the its obligations under applicable health and safety regulations with respect to the provision of such access and facilities to BUSINESS LOGIC
- 5.5 If the LICENSEE wishes to take advantage of the internet support element of the Support Scheme, then it shall ensure at its own cost that its computer installation includes the necessary internet connections and communications software to enable the remote service to be operational
- 5.6 In the event that a Program Error causes corruption of the LICENSEE's data before the LICENSEE is able to detect the error, and provided that the LICENSEE is a member of the Support Scheme, BUSINESS LOGIC shall provide reasonable assistance to the LICENSEE to restore the LICENSEE's data to the condition in which it would have been had the Program Error not occurred, subject to regular and proper data backups having been taken and stored safely by the LICENSEE. BUSINESS LOGIC gives no warranty that it will be able to restore the LICENSEE's data. It is the sole and exclusive responsibility of the LICENSEE to ensure it has in place and maintains such procedures and facilities as are reasonably necessary for the recovery and reconstruction of any lost, damaged or altered files, data, or programs
- 5.7 Where a request under the Support Scheme arises as a result of a Disabling Event, BUSINESS LOGIC shall be entitled to charge its normal fees and charges from time to time for the services provided
- 5.8 Without limiting any other provision of these terms and because of the very type and nature of any work to be undertaken by BUSINESS LOGIC under these terms, the LICENSEE agrees to use its best endeavours (without charge or cost to BUSINESS LOGIC) to assist BUSINESS LOGIC to ensure the success of any applications BUSINESS LOGIC may need to make for obtaining visas, importation clearances or licences or exemptions to or compliance with rules relating to the use of BUSINESS LOGIC personnel in the country where the Software is located. If for any reason such applications made by BUSINESS LOGIC fail, then the LICENSEE and BUSINESS LOGIC will work together in good faith to come up with a suitable mutually agreeable solution to any such rules. The LICENSEE confirms that at the date of these terms there are no laws or regulations of or other cause in the country where the Software is to be located that would prohibit BUSINESS LOGIC delivering the Software or Services to such country and location
- 5.9 The LICENSEE shall be entitled to cancel the Support Scheme by not less than two calendar months written notice to BUSINESS LOGIC expiring on any Support Renewal Date. In the event that the LICENSEE or BUSINESS LOGIC fail to terminate the Support Scheme or these terms in accordance with its terms, BUSINESS LOGIC shall continue to provide the Support Scheme during each successive Subscription Period and, unless otherwise agreed in writing, the LICENSEE shall be liable to pay BUSINESS LOGIC's then applicable Support Scheme Fees for the Software with respect to such period
- 5.10 In the event that the LICENSEE cancels and then at a later date rejoins the Support Scheme (the intervening period being the 'Support Suspension Period') the LICENSEE shall, in addition to complying with any other terms and conditions applying to the Support Scheme at the time of rejoining, pay such Support Scheme Fees to BUSINESS LOGIC that the LICENSEE would have paid had it remained a member of the Support Scheme during the Support Suspension Period and BUSINESS LOGIC shall supply and the LICENSEE shall install any Software updates, Work Arouns, fixes and Upgrades specified by BUSINESS LOGIC that would pursuant to the Support Scheme have been supplied to the LICENSEE during the Support Suspension Period

6. TERM AND TERMINATION

- 6.1 Any agreement between BUSINESS LOGIC and LICENSEE based upon these terms may be terminated
- 6.1.1 forthwith by BUSINESS LOGIC if the LICENSEE fails to make any payment on the due date therefore and payment shall not have been made within 14 days' of a written request for the same
 - 6.1.2 forthwith by either party if the other commits any material breach of any term of these terms (other than one falling within **clause 6.1.1** above) and which (in the case of a breach capable of being remedied) shall not have been remedied within 21 days' of a written request to remedy the same or
 - 6.1.3 forthwith by either party if the other party shall have a receiver or administrative receiver appointed or shall pass a resolution for winding-up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction shall make an order to that effect or if the other party shall become subject to an administration order (or have an administrator appointed) or shall enter into any voluntary arrangement with its creditors or shall permanently cease to carry on business

- 6.2 Any termination of these terms pursuant to this **clause 6**, **clause 16.3** or **clause 9.3** shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party, nor the coming into or continuance in force of any clause which is expressly or by implication intended to come into or continue in force on or after such termination
- 6.3 In the event of the termination of these terms for any reason whatsoever the LICENSEE shall forthwith pay any monies due to BUSINESS LOGIC or to become due at a later date. Save only as expressly provided otherwise in these terms, no part of the Support Scheme, training or other fees for services shall be repayable on termination of these terms for any reason

7. WARRANTIES

- 7.1 BUSINESS LOGIC warrants that for 60 days from the Commencement Date the Software will remain free from Program Errors. Should the Software contain Program Errors during that period then BUSINESS LOGIC's sole liability will at its sole discretion be
- 7.1.1 to rectify or procure that an accredited BUSINESS LOGIC Partner rectifies Program Errors under the Support Scheme or
- 7.1.2 to remove the Software and Licensed Material and to refund any fee paid by the LICENSEE to BUSINESS LOGIC to licence the Software
- 7.2 The warranty contained in **clause 7.1** shall not apply to a Program Error arising out of a Disabling Event
- 7.3 Notwithstanding any other provision of these terms BUSINESS LOGIC does not warrant that use of the Software will meet the LICENSEE's data processing requirements nor that the operation of the Software will be uninterrupted or error-free
- 7.4 BUSINESS LOGIC warrants that it will provide the Support Scheme with reasonable care and skill provided that any liability accepted by BUSINESS LOGIC under this **clause 7.4** shall be limited by **clause 8.3**

8. LIMITATION OF LIABILITY

- 8.1 Where liability is accepted by BUSINESS LOGIC under **clauses 5 or 7**, its only obligation shall be as set out in such clauses. Subject as otherwise provided in **clause 5 or 7**, all conditions, duties, warranties and representations, expressed or implied by statute, common law or otherwise in relation to the Software or its maintenance including, but not limited to, any (if any) implied warranties, duties or conditions of merchantability, of fitness for a particular purpose, of reliability or availability, of accuracy or completeness, of responses, of results, of workmanlike effort, of lack of viruses, of lack of negligence, of title, of quiet enjoyment, of quiet possession, of correspondence to description, of non-infringement, with regard to the provision of or failure to provide support or other services, information, Software, or related content through the Software or otherwise arising out of the use of the Software are excluded to the fullest extent permitted by law
- 8.2 Subject as otherwise provided in **clauses 5, 7 and 8.3** and to the maximum extent permitted by law, BUSINESS LOGIC shall be under no liability to the LICENSEE for any loss, damage or injury, direct or indirect, special, incidental, punitive or consequential (including but not limited to, loss of profit or confidential or other information, business interruption, loss of privacy, failure to meet any duty including of good faith, reasonable care or negligence and for any other pecuniary or other loss whatsoever) arising out of or in any way related to the use of or inability to use the Software or the licensed material, the provision or failure to provide support or other services, howsoever arising, and whether or not caused by the tort (including negligence), fault, strict liability, breach of contract or warranty or misrepresentation of BUSINESS LOGIC its employees or agents, even if BUSINESS LOGIC shall have been advised of the possibility of such loss, damage or injury, save that BUSINESS LOGIC shall accept liability without limit for fraud or for death or personal injury caused by the negligence of BUSINESS LOGIC
- 8.3 In each year of these terms BUSINESS LOGIC's total aggregate liability for negligence, breach of contract, misrepresentation or otherwise shall in no circumstances exceed the Support Scheme Fees (if any) received by BUSINESS LOGIC in the 12 months prior to the event giving rise to liability. The LICENSEE releases BUSINESS LOGIC from all obligations, liabilities, claims or demands in excess of this limitation and acknowledges and agrees that other parts of these terms rely upon the inclusion of this section and the resulting allocation of risks
- 8.4 BUSINESS LOGIC shall have no liability of any nature whatsoever for Configurations or modifications made to the Software by the LICENSEE or any third party whether or not made in accordance with **clause 4**

9. FORCE MAJEURE

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10. GENERAL

- 10.1 Intentionally Blank
- 10.2 Intentionally Blank
- 10.3 These terms shall be governed by and construed in accordance with the Laws of England and the parties hereby submit to the non-exclusive jurisdiction of the English courts. If these terms is written in English and any other language the English language version shall take precedence and shall govern the construction and operation of these terms between the parties and in any dispute. Any other language version of these terms (whether required by the LICENSEE related policies or purposes, local courts, local law or for any other reason) shall be for information purposes only. Both parties acknowledge that they have mastered the English language and fully understand these terms and its content
- 10.4 These terms replaces and supersedes all previous agreements (if any) between BUSINESS LOGIC and the LICENSEE in connection with the support and maintenance of the Software supplied to the LICENSEE by BUSINESS LOGIC. BUSINESS LOGIC reserves the right and LICENSEE acknowledges and agrees that BUSINESS LOGIC may unilaterally make reasonable changes to the Support Scheme under these terms provided that BUSINESS LOGIC gives the LICENSEE not less than one calendar month's notice of such changes
- 10.5 Intentionally Blank

- 10.6 Intentionally Blank
- 10.7 Intentionally Blank
- 10.8 To assist with the development and to enhance the competitiveness of BUSINESS LOGIC's Software and services, LICENSEE may from time to time provide suggestions, comments or other feedback ("Suggestions") to BUSINESS LOGIC with respect to such Software and services. LICENSEE acknowledges and agrees that all Suggestions are and shall be given entirely voluntarily. Suggestions, even if designated as confidential by LICENSEE, shall not, absent a separate written agreement, create any confidentiality obligation on the part of BUSINESS LOGIC. Furthermore, except as otherwise provided herein or in a separate subsequent written agreement between the parties, BUSINESS LOGIC shall be free to use, disclose, reproduce, license or otherwise distribute, and exploit Suggestions as it sees fit, entirely without obligation or restriction of any kind on account of intellectual property rights or otherwise
- 10.9 Intentionally Blank

11. DATA PROTECTION

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 - 11.1.1 Intentionally Blank
 - 11.1.2 Intentionally Blank
 - 11.1.3 Intentionally Blank
- 11.2 Intentionally Blank
- 11.3 Intentionally Blank

12. DISPUTE RESOLUTION

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- 12.4 Intentionally Blank

13. EXPORT ADMINISTRATION AND ANTI CORRUPTION

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 - 13.2.3 Intentionally Blank
- 13.3 Intentionally Blank
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14. SUPPORT SCHEME SERVICES

All level one support may be provided to LICENSEE by BUSINESS LOGIC or an accredited BUSINESS LOGIC Partner authorised by BUSINESS LOGIC to provide such services. BUSINESS LOGIC will provide level two Support Scheme services in accordance with **paragraphs 14.2, 14.3 and 14.4 of this clause 14** to the LICENSEE

14.1 Level one customer Support Scheme services

Level one Support Scheme services to be provided to the LICENSEE shall as a minimum include

- 14.1.1 an advisory and explanatory service with respect to the Software including the provision of a telephone consultation service (help-line), and a telephone data communication service to enable an off-site diagnostic service and a software transmission service (internet support), all to be provided 24 hours a day 7 days a week. Certain Level 1 Support Scheme services may be dependent upon the LICENSEE providing on a prompt and if appropriate urgency basis, to BUSINESS LOGIC details of any Program Error and a detailed description, in writing and with supporting documentation if requested, of the circumstances in which it arose. BUSINESS LOGIC will notify the LICENSEE as soon as practicable if such additional information is required
- 14.1.2 communication of information on matters of general interest with respect to the Software

14.2. Level two Support Scheme services

Subject to BUSINESS LOGIC having received applicable Support Scheme fees payable for any period in which the LICENSEE requests assistance in the use and operation of a supported release of BUSINESS LOGIC Software, BUSINESS LOGIC shall provide level two Support Scheme services in accordance with **paragraphs 14.2, 14.3 and 14.4 of this clause 14** in connection with that request to the LICENSEE either directly to the LICENSEE or through an accredited BUSINESS LOGIC Partner at the sole discretion of BUSINESS LOGIC

BUSINESS LOGIC shall only be obligated to provide level two Support Scheme services after any accredited BUSINESS LOGIC Partner appointed to provide level 1 support services has exhausted all resources available to it to resolve the BUSINESS LOGIC Software issue logged by the LICENSEE under a valid agreement for such services between the LICENSEE and the accredited BUSINESS LOGIC Partner. Before initiating a level two Support Scheme service request to BUSINESS LOGIC, the LICENSEE will have first attempted to resolve the issue itself by referring to the latest applicable BUSINESS LOGIC Software documentation and/or any internal experts, have checked that the same issue has not previously been logged by it with BUSINESS LOGIC and eliminated the possibility that the issue is either not a BUSINESS LOGIC Software defect or not related to such software products in any way. If the LICENSEE fails to take all such reasonable steps, BUSINESS LOGIC may charge for time spent investigating and resolving that issue at its charging rates applicable from time to time subject to any minimum charge BUSINESS LOGIC may fix from time to time. Any such costs charged to the LICENSEE will be accompanied by a report detailing the issue, resolution and customer contact

14.2.1 Program Error correction

Provided that the LICENSEE shall have supplied to BUSINESS LOGIC in writing where appropriate, a detailed description of any Program Error (as defined in the Support Scheme) and the circumstances in which it arose, BUSINESS LOGIC shall use its best commercial efforts to provide a Program Error correction service which may include the provision of updates, workarounds or fixes (at the sole discretion of BUSINESS LOGIC) and any necessary amendments to Licensed Material(s) as soon as reasonably possible (taking into account the seriousness of the loss of Specified Functionality) to correct the Program Error

Any other issue with BUSINESS LOGIC Software that during the relevant period is not a Program Error and that the LICENSEE refers to BUSINESS LOGIC will only be dealt with by BUSINESS LOGIC on the basis that a minimum charge is payable together with BUSINESS LOGIC's consultancy fees at the prevailing rate for the time spent by BUSINESS LOGIC in resolving the issue

14.2.2 Updates

Updates to BUSINESS LOGIC Software will be provided at no extra cost during Support Scheme subscription periods which have been fully paid for in advance. New BUSINESS LOGIC software application modules not yet subscribed for may be charged for at the appropriate BUSINESS LOGIC licence fee and Support Scheme membership fee applicable from time to time. If for any reason the LICENSEE requires modifications for installed copies of BUSINESS LOGIC Software the LICENSEE shall discuss with BUSINESS LOGIC its requirements and BUSINESS LOGIC will indicate its then applicable costs and charges for such development work and associated services. Such updates, enhancements and any other BUSINESS LOGIC Software modifications BUSINESS LOGIC may agree to supply, for the purposes of these terms, will be deemed to form part of the BUSINESS LOGIC Software

14.2.3 Service availability

Level two Support Scheme services are available to the LICENSEE 24 hours a day 7 days a week

The primary method of contact for the LICENSEE to raise a level two support request is first, through any accredited BUSINESS LOGIC Partner appointed to provide the level one Support Scheme or, in the absence of such appointment, directly through the BUSINESS LOGIC web support system. Details of the web support system, usernames, passwords and the support process will be provided to the LICENSEE upon request. BUSINESS LOGIC will log and allocate an official Incident Number for each support request through the web support system. Telephone and email contact may be initiated by BUSINESS LOGIC during the resolution of support requests. Only in the case of the web support system being unavailable will the LICENSEE be permitted to contact BUSINESS LOGIC by telephone or email without an official Incident Number

Contact details are:

For directly requesting level two support: Web Support ó www.businesslogic.co.uk

For resolution of incidents: Telephone ó +40 720 660 450, Email ó support@businesslogic.co.uk

Only the LICENSEE's BUSINESS LOGIC authorised personnel may raise level two support requests through the web support system or respond to calls or emails initiated by BUSINESS LOGIC Support Services. No priority rating is assigned by BUSINESS LOGIC Support Services ó level two support requests are dealt with in the order they are logged

14.3. LICENSEE's responsibilities in connection with level two Support Scheme services

As a condition of BUSINESS LOGIC meeting its obligations under this **clause 14** with respect to level two Support Scheme services, and without limiting any other provisions of these terms, the LICENSEE must use all reasonable endeavours to ensure that it

- 14.3.1 meets all minimum specifications in relation to users, workstations, servers and its network as advised by BUSINESS LOGIC from time to time
- 14.3.2 prevents unauthorised third parties from gaining access to its data and maintains the integrity and accuracy of its data
- 14.3.3 ensures its data security by correctly and effectively configuring firewalls and employing any other security measures that are reasonably necessary to ensure the security of its web and network servers
- 14.3.4 upgrades BUSINESS LOGIC Software as recommended by BUSINESS LOGIC from time to time
- 14.3.5 carries out and stores regular backups of its data including where applicable, before upgrading
- 14.3.6 refers to the relevant manuals and documentation and/or contacts any internal experts in the BUSINESS LOGIC Software prior to contacting BUSINESS LOGIC or the applicable accredited BUSINESS LOGIC Partner in the event of any user issues with such software
- 14.3.7 ensures nominated employees are available for training in the BUSINESS LOGIC Software and/or Licensed Material and maintains their knowledge through such software and documentation updates
- 14.3.8 contacts BUSINESS LOGIC or the applicable accredited BUSINESS LOGIC Partner for support purposes only through the LICENSEE's BUSINESS LOGIC authorised personnel primarily using the internet or e-mail and the LICENSEE accepts any resolution delays resulting from a delayed notification
- 14.3.9 or the applicable accredited BUSINESS LOGIC Partner advises BUSINESS LOGIC of any settings or configurations required by or applied to the LICENSEE's BUSINESS LOGIC Software or the setup of such software that may impact BUSINESS LOGIC's ability to deliver support.

Notes

Release Control - BUSINESS LOGIC's release numbering convention three-digit release control system is in an X.Y format for the major and minor versions and the maintenance updates to assist you to track BUSINESS LOGIC Software updates and patches and to order the priority and timing of problem correction steps

Compatibility - BUSINESS LOGIC will use reasonable endeavours to ensure that all BUSINESS LOGIC Software releases are compatible with the most current released versions of other software that BUSINESS LOGIC has notified you in writing will work with BUSINESS LOGIC Software and document any methods for handling any incompatibilities

14.4. Exclusions from level two Support Scheme services

BUSINESS LOGIC is not obliged to provide level two Support Scheme services in the following circumstances

- 14.4.1 use by any person of any BUSINESS LOGIC Software other than in accordance with or the purposes provided for in the applicable Licensed Material
- 14.4.2 modifications to any BUSINESS LOGIC Software made other than by BUSINESS LOGIC

- 14.4.3 configuration of any BUSINESS LOGIC Software made other than by BUSINESS LOGIC not carried out in accordance with BUSINESS LOGIC's specified procedure as set out from time to time for such software
 - 14.4.4 use of BUSINESS LOGIC Software other than with hardware and operating systems approved by BUSINESS LOGIC from time to time
 - 14.4.5 use of any pre commercial release, non approved or no longer supported version of a BUSINESS LOGIC Software or Licensed Material
 - 14.4.6 where the request for level two Support Scheme services is made by any person not being a LICENSEE's BUSINESS LOGIC authorised person or is due to a failure by the relevant end user to implement recommendations in respect of or solutions to faults previously advised by BUSINESS LOGIC or an accredited BUSINESS LOGIC Partner to the LICENSEE
 - 14.4.7 use of any software in conjunction with the BUSINESS LOGIC Software other than software specified or agreed by BUSINESS LOGIC
 - 14.4.8 faults in the hardware and/or operating systems and/or any other software used in conjunction with any BUSINESS LOGIC Software
 - 14.4.9 defects in any BUSINESS LOGIC Software caused by anyone other than BUSINESS LOGIC
 - 14.4.10 where the request for level two Support Scheme services is due to any BUSINESS LOGIC Software being installed or implemented by any person not being a BUSINESS LOGIC certified implementation engineer
- BUSINESS LOGIC may charge consultancy fees at its then current rates for any level two Support Scheme services provided to the LICENSEE in the circumstances set out in this **paragraph 4 of clause 14**