UTILIZE SOFTWARE SERVICES LTD Standard Terms and Conditions of Sale

These terms and conditions ("Terms") apply to the supply of goods and services (as applicable) provided by UTILIZE Software Services Ltd of any computer hardware or software or software development, licence, maintenance or other similar or associated items or materials. These Terms are divided into three parts; Sales, Services and General. The General Terms apply to all contracts and dealings with UTILIZE Software Services Ltd. The remaining terms apply depending upon the service to be provided by UTILIZE Software Services Ltd.

PART 1 - SALE OF GOODS

The following terms and conditions in this Part 1 apply to the sale of Goods by UTILIZE SOFTWARE SERVICES LTD.

1.1 Formation of Contract

1.1.1 UTILIZE SOFTWARE SERVICES LTD will sell and the Customer will buy the Goods in accordance with UTILIZE SOFTWARE SERVICES LTD's written quotation (if accepted by the Customer) or the Customer's written order (if accepted by UTILIZE SOFTWARE SERVICES LTD) subject in either case to these Terms. No order submitted by the Customer is deemed to be accepted by UTILIZE SOFTWARE SERVICES LTD unless UTILIZE SOFTWARE SERVICES LTD confirm this in writing.

1.2 Accuracy of Order

1.2.1 The Customer is responsible for ensuring the accuracy of the terms and specification of any order (including any applicable specification) submitted by the Customer.

1.3 Software

1.3.1 All software, whether supplied, installed or implemented is provided within the terms and conditions and licence of the software provider.

1.3.2 If the software comprised in the Goods is not owned by UTILIZE SOFTWARE SERVICES LTD then the Customer will be required to enter into an end-user licence agreement with the owner of the software concerned.

1.3.3 If any software has to any extent been written or developed by UTILIZE SOFTWARE SERVICES LTD then subject to clause 1.3.2 above, UTILIZE SOFTWARE SERVICES LTD hereby grants a non-exclusive, non-transferable licence for the use of such software by the Customer for the duration of this Contract and all copies of such software are the property of UTILIZE SOFTWARE SERVICES LTD and notwithstanding clause 1.5.1 no title or ownership thereof will be transferred to the Customer.

1.3.4 Where software has been written or developed by UTILIZE SOFTWARE SERVICES LTD for the Customer, the Customer acknowledges that such software may only be compatible with the current versions of other software and/or hardware and UTILIZE SOFTWARE SERVICES LTD provides no guarantee that it will be compatible with later versions of other software and/or hardware. For the avoidance of doubt, unless otherwise agreed between the parties in writing, UTILIZE SOFTWARE SERVICES LTD is under no obligation to supply the Customer with any updates or add-ons to the software.

1.4 Delivery

1.4.1 Delivery of the Goods will take place by UTILIZE SOFTWARE SERVICES LTD delivering the Goods to the place agreed in writing with the Customer.

1.4.2 Any dates and times quoted for delivery are estimates only and are not of the essence of the contract. UTILIZE SOFTWARE SERVICES LTD will not be liable for any loss or damage (howsoever arising) to the Customer should UTILIZE SOFTWARE SERVICES LTD be unable to deliver the Goods within the quoted period.

1.4.3 UTILIZE SOFTWARE SERVICES LTD is entitled to make partial deliveries by instalments and these Terms will apply to each partial delivery.

1.4.4 If the Goods are to be delivered in instalments, each delivery will constitute a separate contract and failure by UTILIZE SOFTWARE SERVICES LTD to deliver any one or more instalments in accordance with these Terms will not entitle the Customer to treat the Contract as a whole as terminated.

1.5 Transfer of Property and Risk

1.5.1 Risk in respect of the Goods passes to the Customer at the time of delivery but the title in the Goods will not pass to the Customer until UTILIZE SOFTWARE SERVICES LTD has received payment in full of the price of the Goods and all other goods agreed to be sold or services to be provided by UTILIZE SOFTWARE SERVICES LTD to the Customer for which payment is then due.

1.5.2 Until title in the Goods has passed to the Customer, UTILIZE SOFTWARE SERVICES LTD will be entitled at any time to require the Customer to deliver up the Goods to UTILIZE SOFTWARE SERVICES LTD and, if the Customer fails to do so forthwith, it gives consent for UTILIZE SOFTWARE SERVICES LTD to enter upon any premises the Customer owns, occupies or has control of where the Goods are stored and repossess the Goods.

1.5.3 Until title in the Goods has passed to the Customer, the Customer will hold the Goods as UTILIZE SOFTWARE SERVICES LTD's fiduciary agent and bailee, will not dispose of the Goods and will keep the Goods separate from those of the Customer and third parties and properly stored, protected and insured and identified as UTILIZE SOFTWARE SERVICES LTD's property.

1.6 Installation

1.6.1 Where UTILIZE SOFTWARE SERVICES LTD's written quotation for the sale of the Goods or the Customer's written order for the Goods (if accepted by UTILIZE SOFTWARE SERVICES LTD in accordance with 1.1.1) specifies installation of the Goods or UTILIZE SOFTWARE SERVICES LTD otherwise undertakes any such installation then the Customer will complete all necessary works that may be required to receive the installation of the Goods including all necessary IT infrastructure and suitable electrical supply. If UTILIZE SOFTWARE SERVICES LTD is prevented or delayed from carrying out the installation through no fault of UTILIZE SOFTWARE SERVICES LTD then UTILIZE SOFTWARE SERVICES LTD is entitled to charge the Customer at UTILIZE SOFTWARE SERVICES LTD's then current prices available on written request for any additional works carried out by or on behalf of UTILIZE SOFTWARE SERVICES LTD to enable it to complete the installation and/or for compensation for any losses or costs incurred by UTILIZE SOFTWARE SERVICES LTD by reason of such delay.

1.7 Warranty

1.7.1 The Goods supplied hereunder are warranted to be free from defects in materials and workmanship for a period of 90 days from the date of delivery by UTILIZE SOFTWARE SERVICES LTD. The Customer must within the said period of 90 days notify UTILIZE SOFTWARE SERVICES LTD in writing of any such defects and permit UTILIZE SOFTWARE SERVICES LTD to inspect the Goods as required by UTILIZE SOFTWARE SERVICES LTD. If the Customer does not so notify then the Customer will not be entitled to reject the Goods and UTILIZE SOFTWARE SERVICES LTD will have no liability for such defect.

1.7.2 The above warranty only applies where the Goods have been properly used in accordance with the relevant manufacturer's specifications and any instructions by UTILIZE SOFTWARE SERVICES LTD and does not apply to any Goods that have been repaired or modified by anybody other than UTILIZE SOFTWARE SERVICES LTD.

1.7.3 If a valid claim is notified under clause 1.7.1 above then UTILIZE SOFTWARE SERVICES LTD may at its discretion repair or replace the Goods free of charge or refund the price of the Goods (or a proportionate part) in which case UTILIZE SOFTWARE SERVICES LTD will have no further liability to the Customer.

1.8 Charges and Payment

1.8.1 In respect of the sale of Goods:

1.8.1.1 Payment will be made by the Customer on the date(s) agreed in writing between the Customer and UTILIZE SOFTWARE SERVICES LTD at the point of order for the Goods or within 30 days in the absence of any agreement.

1.8.1.2 Invoices for Goods will ordinarily be issued on delivery of the Goods. If the Goods are specific to the Customer or if the Customer fails to take delivery when required UTILIZE SOFTWARE SERVICES LTD may invoice the Customer at any time after the Goods become available.

1.8.1.3 UTILIZE SOFTWARE SERVICES LTD may require the Customer at any time prior to delivery to pay a deposit to secure any order or part thereof.

1.8.1.4 Any quantity discount given by UTILIZE SOFTWARE SERVICES LTD at the point of order may be removed if the order quantity is subsequently reduced.

1.9   Cancelling of an Order by the Customer

1.9.1 No order, which has been accepted by UTILIZE, may be cancelled by the Customer except with the agreement in writing of UTILIZE. If the order is cancelled the Customer shall pay fifty per cent of the order value plus VAT of the cancelled order, which is to be paid within 30-days of UTILIZE's invoice.

1.9.2 If a Customer order contains training all training must be paid in advance. Cancellation of training requires at least 48 hours written notice and in any event will only be refunded up to a maximum of 50% of the training fee.

1.9.3 Training that is booked in advance must be used within 12 months at which point the block booking expires and the Customer shall not be entitled to a refund for any training not used.

1.9.4 If a Customer order contains licensing, all licensing which has been ordered by UTILIZE to fulfil the order is non-refundable. Cancellation of the order which contains licensing will result in an invoice being generated to cover such licensing costs incurred by UTILIZE.

PART 2 - SERVICES

The following terms and conditions apply to all Services provided or to be provided to the Customer.

2.1 Formation of Contract

2.1.1 UTILIZE SOFTWARE SERVICES LTD will sell and the Customer will buy the Services in accordance with UTILIZE SOFTWARE SERVICES LTD's written quotation (if accepted by the Customer) or the Customer's written order (if accepted by UTILIZE SOFTWARE SERVICES LTD) subject in either case to these Terms. No order submitted by the Customer is deemed to be accepted by UTILIZE SOFTWARE SERVICES LTD unless UTILIZE SOFTWARE SERVICES LTD confirm this in writing.

2.2 UTILIZE SOFTWARE SERVICES LTD's obligations

2.2.1 UTILIZE SOFTWARE SERVICES LTD shall use reasonable endeavours to provide the Services and to deliver the System to the Customer.

2.2.2 UTILIZE SOFTWARE SERVICES LTD may at its discretion appoint a project manager on a chargeable basis, to be agreed with the Customer, to liaise with the Customer on all matters relating to the Services. UTILIZE SOFTWARE SERVICES LTD shall use reasonable endeavours to ensure that the same person acts as project manager throughout the provision of the Services, but may replace him from time to time where reasonably necessary in the interests of UTILIZE SOFTWARE SERVICES LTD's business.

2.2.3 UTILIZE SOFTWARE SERVICES LTD shall use reasonable endeavours to meet any performance dates, but any such dates shall be estimates only and time shall never be of the essence of the Contract.

2.3 Customer's Obligations

2.3.1 The Customer shall:

2.3.1.1 co-operate with UTILIZE SOFTWARE SERVICES LTD in all matters relating to the Services and appoint a project manager (or a suitably qualified member of staff), who shall have the authority to contractually bind the Customer on matters relating to the Services;

2.3.1.2 provide in a timely manner such access to the Customer's premises and data, and such office accommodation and other facilities, as is requested by UTILIZE SOFTWARE SERVICES LTD;

2.3.1.3 provide in a timely manner such information and documentation as UTILIZE SOFTWARE SERVICES LTD may request, and ensure that such information and documentation is correct and accurate in all material respects;

2.3.1.4 be responsible (at its own cost) for preparing the relevant premises for the supply of the Services; and

2.3.1.5 ensure in the interests of health and safety that UTILIZE SOFTWARE SERVICES LTD's personnel, while on the Customer's premises, are at all times familiar with the Customer's premises and safety procedures.

2.3.2 If UTILIZE SOFTWARE SERVICES LTD's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer or the Customer's agents, sub-contractors or employees, the Customer shall be liable to pay to UTILIZE SOFTWARE SERVICES LTD on demand all reasonable costs, charges or losses sustained or incurred by it (including, without limitation, any direct or indirect consequential losses, loss of profit and loss of opportunity to deploy resources elsewhere), subject to UTILIZE SOFTWARE SERVICES LTD confirming such costs, charges and losses to the Customer in writing.

2.4 Charges and Payment

2.4.1 Clause 2.4.2 shall apply if the Services are to be provided on a time-and-materials basis. Clause 2.4.3 shall apply if the Services are to be provided for a fixed price.

2.4.2 Where the Services are provided on a time-and-materials basis:

2.4.2.1 the charges payable for the Services shall be calculated in accordance with UTILIZE SOFTWARE SERVICES LTD's standard daily fee rates as amended from time to time;

2.4.2.2 UTILIZE SOFTWARE SERVICES LTD's standard daily fee rates are calculated on the basis of a 8 hour day worked between 8.30 am and 5.30 pm on weekdays (excluding weekends and public holidays) either spent at the Customer's premises or at UTILIZE SOFTWARE SERVICES LTD's premises;

2.4.2.3 UTILIZE SOFTWARE SERVICES LTD shall be entitled to charge overtime rate at its standard rates for time worked by members of the project team outside the hours referred to in clause 2.4.2.2;

2.4.2.4 UTILIZE SOFTWARE SERVICES LTD shall invoice the Customer for its charges for time, traveling, expenses and materials (and VAT, where appropriate) either at the start of a project or monthly in advance for the month concerned.

2.4.3 Where the Services are provided for a fixed price the total price for the Services shall be the amount set out in the Proposal. The total price shall be paid by the Customer to UTILIZE SOFTWARE SERVICES LTD in instalments as set out in the Proposal (and VAT, where appropriate).

2.5 Intellectual Property Rights

2.5.1 Intellectual Property Rights and all other rights in the System and any associated or other documentation produced as a result of the Services (other than the Third Party Software) shall be owned by UTILIZE SOFTWARE SERVICES LTD and the Customer shall have no right title or interest therein except as expressly set out in this Contract.

2.5.2 Providing the Customer shall have made all payments due under this Contract in accordance with its terms and subject to the terms of clause 1.3, UTILIZE SOFTWARE SERVICES LTD shall grant to the Customer a non-exclusive, non-transferable licence to such extent as is necessary to enable the Customer to make reasonable use of the System and the Services as is envisaged by the parties. If UTILIZE SOFTWARE SERVICES LTD terminates the Contract, this licence will automatically terminate.

PART 3 – GENERAL PROVISIONS

The following terms and conditions apply to all Equipment and Goods sold or to be sold, Software licensed or to be licensed, Software Development to be developed or provided, Services provided or to be provided to the Customer.

3.1 General

3.1.1 These Terms may only be amended, or varied with UTILIZE SOFTWARE SERVICES LTD's agreement in writing. The parties agree that these Terms will prevail notwithstanding any conflicting or additional terms or any orders or other notifications submitted by the Customer.

3.1.2 Words of a technical nature used in these Terms will (unless inconsistent with the context) be construed in accordance with general trade use in the computer industry in the United Kingdom.

3.1.3 Headings in these Terms are for convenience only and have no effect on the interpretation.

3.1.4 Failure by UTILIZE SOFTWARE SERVICES LTD to exercise or enforce any rights, or the giving of any forbearance, delay or indulgence, will not be construed as a waiver of its rights under these Terms or otherwise nor will any single or partial exercise thereof preclude any further or subsequent exercise.

3.2 Specification

3.2.1 The description of any Goods contained in any order form, invoice, descriptive matter, specifications, catalogue or advertising material published or issued by UTILIZE SOFTWARE SERVICES LTD is for identification only and the use of such description will not constitute a sale by description. Any typographical or other error or omission in any such literature or any other document issued or provided by UTILIZE SOFTWARE SERVICES LTD may be corrected by UTILIZE SOFTWARE SERVICES LTD without any liability on the part of UTILIZE SOFTWARE SERVICES LTD.

3.2.2 UTILIZE SOFTWARE SERVICES LTD reserve the right to supply Goods which differ from the specifications agreed between the parties and/or to modify any specifications in respect of provided that this does not materially affect the performance of the Goods.

3.3 Prices

3.3.1 Unless otherwise stated in writing, quotations are valid for 30 days from the date of issue and are exclusive of VAT and any other relevant taxes which are payable by the Customer in addition.

3.3.2 All waiting time spent by any employees or agents of UTILIZE SOFTWARE SERVICES LTD (which includes any time which had been allocated to a Customer by UTILIZE SOFTWARE SERVICES LTD and which is not utilised by such Customer for any of the reasons set out in this clause) as a result of any delay, variation or failure by the Customer to comply with these Terms (which for these purposes includes any delays or postponements by the Customer of any installation dates specified by UTILIZE SOFTWARE SERVICES LTD, of dates of scheduled service visits or otherwise) will be payable by the Customer to UTILIZE SOFTWARE SERVICES LTD at UTILIZE SOFTWARE SERVICES LTD's then current rates.

3.3.3 The Customer shall pay any chargeable expenses and disbursements which are incurred by UTILIZE SOFTWARE SERVICES LTD personnel on behalf of the Customer including but not limited to hotels, subsistence, travelling, mileage at rate approved by HM Revenue & Customs from time-to-time, supplies, telephone charges, copying charges and the cost of any materials or services reasonably and properly provided by third parties required by UTILIZE SOFTWARE SERVICES LTD for the supply of services.

3.4 Payment

3.4.1 If no payment date(s) has been agreed in writing in accordance with these Terms then payment by the Customer will be made within 30 days after the date of UTILIZE SOFTWARE SERVICES LTD's invoice.

3.4.2 If any payments from the Customer under these Terms are payable by instalments, the Customer will pay such instalments in advance by direct debit or such other method and at such intervals as UTILIZE SOFTWARE SERVICES LTD may agree in writing.

3.4.3 If the Customer fails to make any payment due to UTILIZE SOFTWARE SERVICES LTD (whether under these Terms or otherwise) on its due date then UTILIZE SOFTWARE SERVICES LTD may (without prejudice to any other remedy) cancel the Contract or suspend any further performance of any obligations by UTILIZE SOFTWARE SERVICES LTD to the Customer or appropriate any money received from the Customer against such sums as UTILIZE SOFTWARE SERVICES LTD may determine (notwithstanding any instructions from the Customer). For the avoidance of doubt, UTILIZE SOFTWARE SERVICES LTD will be entitled to suspend the performance of services in the event that there are any sums owing by the Customer in respect of any other Goods and/or Services provided by or on behalf of UTILIZE SOFTWARE SERVICES LTD to the Customer.

3.4.4 All payments due to UTILIZE SOFTWARE SERVICES LTD under these Terms will be paid in full without any set off, deduction, counterclaim or withholding of any sum for whatever reason.

3.4.5 UTILIZE SOFTWARE SERVICES LTD reserves the right to charge interest on the amount of any delayed payment at the rate of 4% over the base rate of Lloyds TSB Bank Plc from time to time per calendar month or part thereof on the outstanding amount until payment has been made in full.

3.5 Lease

3.5.1 If any payments due to UTILIZE SOFTWARE SERVICES LTD in respect of Goods or services is to be paid by a third party then the Customer agrees that immediately on delivery of the Goods in question the Customer will sign the acceptance note for the leasing company or other third party and will generally take all steps as may be necessary to ensure that payment is made to UTILIZE SOFTWARE SERVICES LTD for the Goods and/or Services in accordance with these Terms.

3.6 UTILIZE SOFTWARE SERVICES LTD Employees

3.6.1 The Customer will take all such steps as may be necessary to ensure the safety and welfare of any of UTILIZE SOFTWARE SERVICES LTD's representatives who visit any premises of or on behalf of the Customer.

3.6.2 The Customer will fully indemnify and hold harmless UTILIZE SOFTWARE SERVICES LTD from and against any claim for loss, damage or injury to any person or property occasioned by or arising directly or indirectly from any negligence or misuse of the Goods or the Equipment or any other breach of these Terms by or on behalf of the Customer.

3.7 Liability

3.7.1 Subject as expressly provided in these Terms and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977) all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law, but nothing in these Terms will affect the liability of UTILIZE SOFTWARE SERVICES LTD for any fraudulent misrepresentation.

3.7.2 Where the Goods are sold under a consumer transaction (as defined by the Consumer Transaction (restrictions on Statements) Order 1976) the statutory rights of the Customer are not affected by these Terms.

3.7.3 The Customer accepts that in respect of the sale of the Goods, whilst UTILIZE SOFTWARE SERVICES LTD will endeavour to use its expertise and experience to advise the Customer, UTILIZE SOFTWARE SERVICES LTD is acting as a supplier only and it is the Customer's responsibility to ensure that the Goods will be suitable for its requirements and the Customer acknowledges that prior to the Contract it has fully and accurately advised UTILIZE SOFTWARE SERVICES LTD of its requirements, both present and anticipated, in respect of the Goods.

3.7.4 If UTILIZE SOFTWARE SERVICES LTD is unable, other than through the act or default of the Customer, within a reasonable time to repair or replace any defective Goods in accordance with the Warranty set out in these Terms and where such Goods are unusable due to such defect then, the Customer's only remedy is to reject such Goods and on their return to UTILIZE SOFTWARE SERVICES LTD's premises the Customer is entitled to recover the price paid for such Goods provided the Customer notified such defect in accordance with these Terms. Such payment shall be the extent of UTILIZE SOFTWARE SERVICES LTD's liability to the Customer.

3.7.5 Except in the case of death or personal injury caused by UTILIZE SOFTWARE SERVICES LTD's negligence, or liability for defective products under the Consumer Protection Act 1987, UTILIZE SOFTWARE SERVICES LTD will not have any Liability to the Customer for loss of profit or any indirect, special or consequential Loss of the Customer arising out of or in connection with the provision of any goods or services or any delay in providing or failure to provide any goods or services even if UTILIZE SOFTWARE SERVICES LTD had been advised of the possibility of such potential loss.

3.7.6 Except in the case of death or personal injury caused by UTILIZE SOFTWARE SERVICES LTD's negligence, or liability for defective products under the Consumer Protection Act 1987, no action regardless of form may be brought by the Customer more than 12 months after the cause of action has accrued.

3.7.7 UTILIZE SOFTWARE SERVICES LTD will have no liability under these Terms or otherwise to the Customer arising out of:

3.7.7.1 any loss or corruption of any documents, data, memory erasure of media stored on disk, whether total or partial howsoever arising by reason (in whole or in part) of the Customer's failure to maintain adequate back-up copies of all of its operating system software, application software, data files and other documentation;

3.7.7.2 any loss or corruption of any documents, data, memory erasure of media stored on disk, whether total or partial howsoever arising, including but not limited to loss which may occur, whilst installation, service or maintenance work is being carried out by or on behalf of UTILIZE SOFTWARE SERVICES LTD in accordance with these Terms or any other reason;

3.7.7.3 any act or omission of any third party telecommunication provider, or fault or failure of their equipment (including any prevention of any remote servicing facility in respect of the Equipment);

3.7.7.4 and if any damage to any of the program or data files of the Customer occurs then UTILIZE SOFTWARE SERVICES LTD's responsibility will be confined to assisting the Customer to restore the latest backup copy and installing application software made available on site by the Customer. If on-site assistance is required to reconstruct the files then UTILIZE SOFTWARE SERVICES LTD will charge the Customer for the cost of such assistance at UTILIZE SOFTWARE SERVICES LTD's then current rates.

3.7.8 The Customer warrants to UTILIZE SOFTWARE SERVICES LTD that none of its employees nor the employees of any other party will become employees of UTILIZE SOFTWARE SERVICES LTD by reason of the provision of the services by UTILIZE SOFTWARE SERVICES LTD under these Terms, whether under the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("the Regulations") or otherwise. The Customer will repay to UTILIZE SOFTWARE SERVICES LTD any costs, expenses or other sums for which UTILIZE SOFTWARE SERVICES LTD is or may be liable by reason of the applicable or alleged application of the Regulations in relation to provision of such services by UTILIZE SOFTWARE SERVICES LTD including (without limitation) any compensation or damages which UTILIZE SOFTWARE SERVICES LTD pays to any such person.

3.7.9 The Customer agrees to indemnify and keep UTILIZE SOFTWARE SERVICES LTD fully indemnified from and against any loss, claim or liability whatsoever caused by UTILIZE SOFTWARE SERVICES LTD as a result of negligence or any default by UTILIZE SOFTWARE SERVICES LTD (or its employees, agents, sub-contractors or representatives) of its obligations however arising in connection with the Services.

3.7.10 If the Customer requires insurance cover for business disruption or loss caused by UTILIZE SOFTWARE SERVICES LTD's negligence or failure to deliver services in a timely fashion and suffers any kind whatsoever of, loss of profits, then it is the responsibility of the Customer to obtain an insurance policy to cover any such risk.

3.7.11 The Customer agrees and acknowledges that the allocation of risk in this clause 3.7 is fair and reasonable in the circumstances having been taken into account in setting the level of Services to be supplied.

3.8 Warranties

3.8.1 The Customer warrants and represents that the use by UTILIZE SOFTWARE SERVICES LTD of any data, materials or equipment supplied by the Customer for use by UTILIZE SOFTWARE SERVICES LTD, will not infringe the Intellectual Property Rights of any third party and the Customer will fully indemnify UTILIZE SOFTWARE SERVICES LTD for any loss or damages in this respect.

3.9 Confidentiality

3.9.1 Except as expressly provided, neither party may at any time whether during or after the expiry of these Terms use or disclose the other party's Confidential Information and the Customer will take all reasonable steps to ensure that its employees are bound by the same obligations and that such obligations will continue beyond the termination of employment with the Customer.

3.9.2 UTILIZE SOFTWARE SERVICES LTD may as a consequence of providing any Services to the Customer be exposed to information which the Customer may consider to be Confidential Information. It is the Customer's responsibility to ensure that any such Confidential Information is marked appropriately or otherwise identified in writing to UTILIZE SOFTWARE SERVICES LTD.

3.9.3 The obligations of this clause 3.9 shall survive the termination of these Terms.

3.10 Performance

3.10.1 UTILIZE SOFTWARE SERVICES LTD will not be liable for any failure or delay in complying with these Terms if the failure of delay was due to force majeure, including any circumstances whatsoever beyond the reasonable control of UTILIZE SOFTWARE SERVICES LTD in which event UTILIZE SOFTWARE SERVICES LTD will as soon as reasonably practicable notify the Customer of the nature and extent of the circumstances in question. If the force majeure continues for more than 30 days then UTILIZE SOFTWARE SERVICES LTD may cancel this Contract (or any part thereof) without liability to the Customer.

3.11 Sub-Contracts

3.11.1 UTILIZE SOFTWARE SERVICES LTD may assign, sub-contract or otherwise transfer the benefit of, and/or its obligations under this Contract to any person at any time.

3.11.2 The Customer acknowledges that this Contract is personal to the Customer and that it may not assign or in any way make over to any third party, whether in whole or in part, the benefit of, and/or its obligations under this Contract without the prior written authority of UTILIZE SOFTWARE SERVICES LTD and on such terms as UTILIZE SOFTWARE SERVICES LTD may reasonably require.

3.11.3 Save where expressly stated in these Terms, no person will become entitled to enforce any of its provisions of these Terms who would not have been so entitled but for the provisions of the Contracts (Rights of Third Parties) Act 1999, the provisions of which do not apply to these Terms.

3.12 Termination

3.12.1 UTILIZE SOFTWARE SERVICES LTD may without prejudice to any other remedy available to it at any time by giving written notice terminate or suspend this Contract or such part of it as UTILIZE SOFTWARE SERVICES LTD may elect (including stopping any Goods in transit) if:

3.12.1.1 the Customer commits any continuing or material breach of these Terms and if the breach is capable of remedy, is not remedied within thirty days of a written notice detailing the breach;

3.12.1.2 a resolution is passed or an order is made for the liquidation of or the winding up of the Customer (save for the purpose of a bona fide reconstruction or amalgamation);

3.12.1.3 the Customer becomes subject to an administration order, a receiver or manager or administrative receiver is appointed over the Customer's property or assets;

3.12.1.4 the Customer suffers execution or distress or takes or suffers any similar action in consequence of a debt;

3.12.1.5 the Customer is insolvent or would be taken as insolvent under section 123 Insolvency Act 1986;

3.12.1.6 the Customer is dissolved or otherwise threatens or ceases to carry on business or a substantial part of it;

3.12.1.7 in the case of a sole trader or partnership anything analogous to any of the above occurs.

3.12.2 On termination of this Contract for any reason the Customer will return or delete any of UTILIZE SOFTWARE SERVICES LTD's Confidential Information and return to UTILIZE SOFTWARE SERVICES LTD all property of UTILIZE SOFTWARE SERVICES LTD under the Customer's possession or control and UTILIZE SOFTWARE SERVICES LTD will return or delete any of the Customer's Confidential Information and return to the Customer all property of the Customer under UTILIZE SOFTWARE SERVICES LTD's possession or control.

3.12.3 On termination of the Contract any licence to use software granted by UTILIZE SOFTWARE SERVICES LTD will immediately terminate and the Customer will return to UTILIZE SOFTWARE SERVICES LTD any such software and all copies thereof and will not use or permit the use of any such software. The Customer acknowledges and agrees that UTILIZE SOFTWARE SERVICES LTD will be entitled to remove such software from all operating systems of the Customer whether by means of remote access or otherwise. The Customer will not do or omit to do anything which might prevent or hinder such removal.

3.12.4 If the Customer terminates this Contract (or UTILIZE SOFTWARE SERVICES LTD terminates by reason of any acts or omissions of the Customer) then

3.12.4.1 in respect of any Goods such termination can only be made with UTILIZE SOFTWARE SERVICES LTD's written consent and on terms that the Customer will indemnify UTILIZE SOFTWARE SERVICES LTD in full against all loss (including loss of profit) costs, charges and expenses incurred by UTILIZE SOFTWARE SERVICES LTD as a result of such termination;

3.12.4.2 in respect of Services if the termination occurs prior to the end of the Initial Term or any Renewal Period, UTILIZE SOFTWARE SERVICES LTD may without prejudice to any other remedies available to it demand and receive from the Customer an early termination charge. This charge will be calculated to recover such costs as UTILIZE SOFTWARE SERVICES LTD has reasonably incurred in equipping itself to deliver Services and which have not been fully recovered by UTILIZE SOFTWARE SERVICES LTD from the Charges paid by the Customer at the date of termination; and

3.12.4.3 in respect of Services the Customer shall be liable for the full value of UTILIZE SOFTWARE SERVICES LTD's charges set out in the Proposal as well as any and all charges, fees and additional costs accrued up to the point of termination, which may include but not be limited to software costs and travelling expenses.

3.13 Data Protection

3.13.1 Each party will ensure that in the performance of its obligations under these Terms it will at all times comply with the Data Protection Act 1998.

3.13.2 The Customer consents to the processing by UTILIZE SOFTWARE SERVICES LTD of all the Customer's personal data (as the term 'personal data' is defined in the Data Protection Act 1998) for all purposes connected with these Terms.

3.13.3 The Customer acknowledges that any data transmitted over the Internet or through any other form of transmission including by telephony or other electronic means cannot be guaranteed to be free from the risk of interception even if transmitted in encrypted form and that UTILIZE SOFTWARE SERVICES LTD has no liability for the loss, corruption or interception of any such data.

3.14 Non Solicitation

3.14.1 The Customer acknowledges the investment made by UTILIZE SOFTWARE SERVICES LTD in the training of UTILIZE SOFTWARE SERVICES LTD's Personnel and the commercial interest which UTILIZE SOFTWARE SERVICES LTD has in retaining their services.

3.14.2 The Customer agrees that if any of the UTILIZE SOFTWARE SERVICES LTD Personnel who have provided all or any part of any services for or on behalf of UTILIZE SOFTWARE SERVICES LTD to the Customer within 6 months of leaving the employment or engagement of UTILIZE SOFTWARE SERVICES LTD accepts an Engagement with the Customer then the Customer will pay to UTILIZE SOFTWARE SERVICES LTD such sum as represents 30% of the anticipated annual salary or other sums to be paid by the Customer to such person(s) within the first year of such Engagement.

3.15 Notices

3.15.1 All notices under these Terms must be in writing and will be effective only if given by either party to the other party at their last known principal place of business or such other address as that party has nominated, in writing, for that purpose.

3.16 Law and Jurisdiction

3.16.1 These Terms will be governed by and construed in accordance with English Law and the English Courts will have non-exclusive jurisdiction to hear all disputes arising in connection with these Terms.

3.16.2 The invalidity or unenforceability for whatever reason will not prejudice the continuation in force of the remainder of these Terms and if any part of these Terms is held by a Court or other competent authority to be illegal or ineffective it or they will be replaced with such legal and effective terms that most closely approach the ineffective terms.

3.17 Entire Agreement

3.17.1 These Terms, the Proposal, Project Plan, Scope of Service and Definition of Service contains the entire agreement between the parties with respect to their subject matter and supersede all previous written and oral agreements and understandings between the parties. The Customer acknowledges that in entering into the Contract it does not rely on any representation,
warranty, agreement or other provision except as expressly set out in these Terms and that all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law, but nothing in these Terms will affect the liability of UTILIZE SOFTWARE SERVICES LTD for any fraudulent misrepresentation.

3.18 Miscellaneous

3.18.1 Any reference to person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality); and

3.18.2 Any reference to company includes any company, corporation or other body corporate, wherever and however incorporated or established.

3.18.3 The parties hereby agree that a person who is not a party to this agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 (as amended, modified or supplemented from time to time) to enforce any of these Terms.

Definitions

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

"Agreement Start Date" The date set out in the Scope of Service.

"Call" Communication (including an email) received by UTILIZE SOFTWARE SERVICES LTD from the Customer reporting a defect or malfunction in the Equipment.

"Charges" The sums payable by the Customer to UTILIZE SOFTWARE SERVICES LTD as set out in the Scope of Service.

"Confidential Information" Any trade secrets or confidential or proprietary information of either party, including these Terms, but excluding any information:

(a) in the public domain otherwise than by a breach of the Contract;

(b) which, prior to disclosure, was already known by the recipient;

(c) that the other party develops independently of or to any information that is disclosed to it under the provisions of the Contract; or

(d) which is subsequently disclosed to the recipient by a third party at liberty to disclose it.

"Contract" The contract between the Customer and UTILIZE SOFTWARE SERVICES LTD for the sale of Goods, Services and/or Services in accordance with these Terms.

"Customer" The person who accepts UTILIZE SOFTWARE SERVICES LTD's written quotation for the sale of the Goods, Services and/or the supply of Services or whose written order in respect thereof is accepted by UTILIZE SOFTWARE SERVICES LTD.

"Definition of Service" The document provided to the Customer by UTILIZE SOFTWARE SERVICES LTD setting out response times and support in relation to Services as amended by UTILIZE SOFTWARE SERVICES LTD from time to time (to include any upgrades) and available on request.

"Engagement" The employment, hire or other use, directly or indirectly and whether as an employee or on a self-employed basis.

"Equipment" All or part of the network, hardware, software and Third Party Software as specified or identified in the Scope of Service.

"Goods" The computer hardware, software and related equipment which UTILIZE SOFTWARE SERVICES LTD is to supply in accordance with these Terms.

"Intellectual Property Rights" Patents, rights to inventions, copyright and related rights, trade marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered, and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

"Installation Address" The address specified in the Scope of Service at which the Equipment is located or such other address as may be agreed in writing by UTILIZE SOFTWARE SERVICES LTD. "Liability" Any liability arising by reason of any representation (unless fraudulent), or any breach of any implied warranty, conditions or other term or any duty at common law, or under any statute, or under any express term of this Contract.

"Loss" In relation to the Customer means loss of profit (or any other loss), damages, costs or other compensation and any legal or other expenses awarded against or incurred by or paid or agreed to be paid in settlement of any claim by the Customer, howsoever arising and whether by reason of negligence of UTILIZE SOFTWARE SERVICES LTD, its employees, its agents or otherwise.

"Normal working hours" 08:300 to 17:30 Monday to Friday but excluding bank or statutory holidays.

"Operating Platform" The complete configuration of hardware, ancillaries/accessories and operating system for an item of Equipment.

"Personnel" Any employee, agent, consultant and/or sub- contractor of the party concerned.

"Project Plan" The plan describing the Services and setting out the estimated timetable and responsibilities for the provision of the Services by UTILIZE SOFTWARE SERVICES LTD.

"Proposal" The proposal to the Customer setting out UTILIZE SOFTWARE SERVICES LTD's understanding of the Customer's requirements.

"Renewal Period" The period commencing after the Initial Term, as set out in an addendum to the Scope of Service, during which UTILIZE SOFTWARE SERVICES LTD will continue to provide Services in accordance with the Scope of Service, which may be renewed or extended at any time by the written agreement of the parties.

"Services" The services to be provided by UTILIZE SOFTWARE SERVICES LTD as set out in the Proposal and/or Project Plan, together with any other services including but not limited to training and consultancy which UTILIZE SOFTWARE SERVICES LTD provides or agrees to provide to the Customer.

"Scheduled Service Hours" The times during which UTILIZE SOFTWARE SERVICES LTD will endeavour to provide services as specified on the Definition of Service.

"System Audit" Means an inspection of the Equipment or part thereof but does not include repair or replacement.

"System" The configured computer program(s), network, documentation, data, diagrams, reports and specifications (including drafts) delivered as a result of the Services provided by UTILIZE SOFTWARE SERVICES LTD.

"Third Party Software" Software developed and licensed by a third party, for which UTILIZE SOFTWARE SERVICES LTD have agreed to provide support, as detailed in the Scope of Service.

"UTILIZE SOFTWARE SERVICES LTD" a company incorporated in England and Wales under company number 9627322 whose registered office is situated at 46 Hullbridge Road, South Woodham Ferrers, Chelmsford, Essex, CM3 5NG or such other group company as may be notified to the Customer from time to time.