SOFTWARE & SERVICE SUPPLY AND LICENCE TERMS

1. Definitions and interpretation

1.1 In this agreement the following terms shall have special meanings:

"**Authorised Users**" unless expressly determined elsewhere in this agreement, or in any Contract, means the Customer's employees, any contract staff who are working for the Customer, or any other person working with the Customer or acting on the Customer's behalf;

"**Intellectual Property Rights**" means all patents, copyrights, design rights, trade marks, service marks, trade secrets, know-how, database rights and other rights in the nature of intellectual property rights (whether registered or unregistered) and all applications for the same, anywhere in the world;

"**Licence Month**" has the meaning given in clause 14.1;

"**Minimum Period**" has the meaning given in clause 14.1;

"**Site**" the premises from which the Customer carries out its business as detailed in the Licence Form(s) agreed between the parties, or as notified to APT in writing from time to time in accordance with clause 6.4; and

"**Software**" has the meaning given in clauses 2.1 and 4.1.

1.2 For the purposes of this agreement, the following terms have the same meaning as in the Data Protection Act 1998:

(a) personal data;

(b) data controller;

(c) data processor;

(d) processing; and

(e) data subject.

1.3 Any Software supplied or licensed under this agreement will not be treated as goods within the meaning of the Sale of Goods Act 1979. Otherwise, the term "**goods**" will have the meaning given to it in that Act.

1.4 In this agreement, unless stated otherwise:

(a) reference to a person includes a legal person (such as a limited company) as well as a natural person;

(b) reference to this agreement includes reference to the front sheet, schedules and appendices and other documents attached to in it or incorporated by reference into it (all as amended or added to from time to time);

(c) reference to "including" or "includes" in this agreement shall be treated as being by way of example as though it carried the words "without limitation" inserted after them, and shall not limit the general applicability of any preceding words;

(d) reference to any legislation shall be to that legislation as amended, extended or re-enacted from time to time and to any subordinate provision made under that legislation;

(e) references to clause numbers or schedules shall be to those in this agreement, and headings shall not affect its interpretation; and

(f) reference to this agreement shall include reference to it after it has been amended, added to or replaced by a new agreement.

2. What this agreement is about

2.1 This is a software supply and licence agreement between **Automated Payment Transfer and the Customer** (together "the **parties**"), details of which can be found on the front page of this agreement. It covers the supply and licence of software and/or services by APT to the Customer from time to time and the use by the Customer of the same.

2.2 The software and/or services to be supplied and licensed by APT to the Customer will be referred to in this agreement as "**Software**".

2.3 Before APT provides any Software to the Customer, APT and the Customer will in each case first agree in relation to such Software:

(a) exactly what Software is to be supplied;

(b) licence fees and other charges payable;

(c) any other relevant details.

In each case all of this information will be included in a document substantively in the form set out in schedule 1 to this agreement (which will be referred to as the "**Licence Form**") and will be agreed and signed on behalf of APT and the Customer.

2.4   If a Licence Form conflicts with the provisions of this agreement, then the provisions of that Licence Form will take precedence in relation to the Software to be supplied in accordance with that Licence Form.

2.5   Each Licence Form will form a separate contract (a **"Contract"**) between the Customer and APT on the terms contained in the Licence Form and in this agreement. Each Contract will be separately terminable by either party in accordance with clause 14 or clause 16.1, however this will not affect the validity or enforceability of the terms of this agreement.

3.   Use of the Software

3.1   The Software may only be used by the Customer in certain ways and these are explained below (under the heading "**What the Customer is allowed to do with the Software**"). There are also some things that the Customer is **not** allowed to do with the Software and these are also explained below (under the heading "**What the Customer is not allowed to do with the Software**").

3.2   In consideration of the fees paid by the Customer to APT, in accordance with the terms and conditions of this agreement and any Licence or Contract entered into between the parties from time to time, APT hereby grants to the Customer a non-exclusive, recoverable licence which will continue in force for the period specified in clause 14.1 or until this agreement or the relevant Contract is terminated.

4.   The Software covered by the agreement

4.1   The Software being supplied and licensed by APT in accordance with the terms and subject to the conditions of this agreement is for such versions of the Software as are listed in the Licence Form, including where applicable any relevant file input or other software templates.

Accordingly this agreement applies to:

(a)   the Software listed in the Licence Form; and

(b)   any updated versions or additional copies of the Software which APT may supply to the Customer (whether the updated or versions or additional copies are supplied under this agreement or under any Licence Form, Contract or other relevant agreement entered into between the parties, such as one for support and maintenance of the Software).

4.2   This agreement does not cover the source code versions of the Software or allow the Customer to have or to use such versions.

5.   Supply of the Software

5.1   APT will supply the Customer with the number of licences of the Software listed in the Licence Form.

5.2   APT will be responsible for installing the Software. The charges for installation of the Software are set out in the Licence Form. The charges for remote installation assistance are set out in the Licence Form or, if no such charges are set out in the Licence Form, are APT's then current charges for remote installation assistance as detailed on APT's website from time to time or available by calling APT Customer Service.

5.3   Following installation of the Software, Bacs Payment Schemes Limited ("**BACS**") may require certain tests to be carried out before any Software can be used to process BACS payments. APT will use its reasonable efforts to assist the Customer in carrying out such tests at the Customers' sole cost, but, unless APT agrees otherwise, will under no circumstances not be responsible for carrying out any such tests. APT will not be responsible for any failure by the Customer to carry out or provide suitable data in relation to any tests required by BACS before Software can be used to process BACS payments for the avoidance of doubt, APT makes no warranty as to the suitability or ability of the Software to pass any tests credited by BACS which should at all times remain the responsibility of the Customer.

5.4   If any Licence Form agreed between the parties from time to time determines that APT is to train the Customer's staff in the use of the Software, then it will do so in a form reasonably determined by APT and, unless APT agrees otherwise, at the Customer's premises immediately following installation of the Software. The Customer will be responsible for all costs and expenses incurred by the Customer or its staff in relation to the training asset out in the Licence Form.

6. What the Customer is allowed to do with the Software

6.1 The Customer may install the Software onto the number of devices of the specification and quantity as further detailed in the Licence Form(s) entered into between the parties from time to time.

6.2 If any Licence Form allows the Customer to use APT's proprietary cloud or local software solutions, then the Customer may licence Authorised Users to access the Software as per the number of licences specified in the Licence Form.

6.3 The Customer may uninstall the Software from any particular computer, network server or workstation in order to install it onto a different computer, network server or workstation provided that:

(a) Before carrying out such reinstallation, the Customer notifies APT of this and completes a written reinstallation request form in such form as may be specified by APT from time to time.

(b) Such reinstallation does not breach any other term of this agreement or of the Contract relating to the Software being reinstalled.

(c) APT will charge for the reinstallation.

6.4 Where the Licence Form states that use of the Software is restricted to a particular Site, the Customer may only use it on computers at that Site. The Customer may opt to change the Site to another one provided that the Customer provides APT with 14 days written notice the Customer may not use the Software at more than one Site at any given time. If the Customer is reinstalling the Software onto different computers as part of a transition to a different Site in accordance with this clause 6.4, the Customer must also comply with clause 6.3.

6.5 Except as expressly allowed otherwise by this agreement, only the Customer's Authorised Users are allowed to use the Software. the Customer includes use by:

(a) the Customer's employees;

(b) any contract staff who are working for the Customer;

(c) any other person working with the Customer and acting on the Customer's behalf;

provided that in each of these cases the person concerned is using the Software exclusively on behalf of the Customer and for the purposes of the Customer's business.

6.6 The purpose for which the Software is intended to be used is set out in the Licence Form and the Customer may only use the Software for that purpose. If the Licence Form states that the Software is being licensed for BACS bureau use, then the Customer may use the Software to provide BACS bureau services to third parties provided that it does not allow such third parties to install or use the Software themselves. Other than as expressly stated otherwise in this clause 6.6, the Customer may only use the Software for the Customer's own internal business purposes and may not use the Software for or on behalf of any third party.

6.7 The Customer may make as many backup copies of the Local Software as is necessary to support the Customer's use of the Software in accordance with this agreement. Such backup copies may be used for the purposes of backup only and not as additional copies of the Software to be put into live use.

6.8 The Customer shall keep a complete and accurate record of the Customers copying and disclosure of the Software and its Authorised Users, and produce such record to APT on request from time to time.

6.9 The Customer shall notify APT as soon as it becomes aware of any unauthorized use of the Software by any person, and shall pay, for broadening the scope of the licences granted under this licence to cover the unauthorized use, an amount equal to the fees which APT would have levied (in accordance with its normal commercial terms then current) had it licensed any such unauthorised use on the date when such use commenced together with interest at the rate provided for in clause 8.5 from such date to the date of payment.

7. What the Customer is <u>not</u> allowed to do with the Software

7.1 Except to the extent set out in clause 6, the Customer is **not** allowed to do any of the following things with the Software:

(a) exceed the number of users of the Software beyond the Authorised Users specified in the Licence Form;

(b) if the Licence Form states that usage of the Software is restricted to a particular Site(s), use its Software anywhere other than at that Site(s) (or at any replacement Site(s) to which the Customer has moved in accordance with clause 6.5;

(c) allow anyone else to use the Software other than Authorised Users in accordance with clause 6

(d) subject to clause 6.6 above, use the Software for or on behalf of anyone else (which includes operating any form of facility on behalf of anyone else or operating a Software bureau service);

(e)   copy or adapt the Software except as allowed by this agreement and then only in order for the Customer to use the software in accordance with this agreement; or

(f)   reverse-engineer or decompile the Software.

(g)   Allow the Software to become the subject of any change, lien or encumbrance; or

(h)   Deal in any other manner with any or all of its rights and obligations under this agreement.

7.2   The Customer must comply with any reasonable instructions which APT gives the Customer relating to the use of the Software.

7.3   The Customer must comply with any reasonable instructions which APT gives to the Customer relating to the use of the Software. Accordingly, the Customer must allow APT access to the Customer's Site(s) for audit purposes and to check that the Software is being used properly. Where APT requires access to APT's Site(s) it shall give no less than 7 days' notice.

8.   Charges

8.1   In each case the Licence Form will set out the licence fees and other charges (e.g. installation/training fees) payable by the Customer in relation to the Software and any services to be supplied in accordance with that Licence Form. The licence fees and other charges will be due for payment on the dates (or on the happening of the events) specified in that Licence Form.

8.2   If for any reason the Licence Form does not specify the charges for any services to be supplied by APT under that Licence Form then the applicable charges will be APT's then current charges for the supply of such services as detailed on APT's website from time to time or available by calling APT Customer Service and will be due immediately following the supply of such services.

8.3   Where the Licence Form states that APT is to install the Software or provide any training in relation to the Software, then APT will also charge the Customer for its reasonable travel costs and expenses incurred in providing these services. Such travel costs and expenses will include (where applicable) reasonable mileage charges, accommodation, subsistence costs, and any other charges reasonably incurred by APT in provision of the Software.

8.4   APT will invoice the Customer for the licence fees and other charges in arrears on a monthly basis until all sums owing have been paid in full. The Customer must pay the invoices within 30 days.

8.5   If the Customer fails to pay any amount payable by it under this licence APT may charge the Customer interest on the overdue amount (payable by the Customer immediately on demand) from the due date up to the date of actual payment, after as well as before judgment, at the rate of 8% per annum above the base rate for the time being of Barclays Bank plc. Such interest shall accrue on a daily basis and be compounded quarterly. APT may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998 and Late Payment of Commercial Debts Regulations 2002

8.6   If the Customer is late in paying any invoices, then APT reserves the right to suspend the Customer's account and maintenance;

8.7   Where APT increases its fees, it shall notify the Customer of the proposed increase at least 60 days before the beginning of the Licence Month concerned. The revised charges will then apply in the following Licence Month and thereafter unless the Customer terminates this agreement in accordance with clause 14.2.

8.8   All amounts charged to the Customer are stated exclusive of VAT or such other equivalent taxes on supplies unless expressly stated otherwise and the Customer must pay these to APT in addition to the amounts concerned.

9.   APT Obligations and Warranties

9.1   APT warrants that the Software will be free from any material defect which has an adverse effect on its use for a period of 12 months after the date of its delivery to the Customer, provided that at all times the Customer uses the Software in accordance with the terms of this agreement, any Licence Form from time to time and the reasonable instructions of APT.

9.2   If APT supplies any services to the Customer under this agreement, then APT warrants that the services will be provided with reasonable care and skill.

9.3   If either of the warranties in clause 9.1 or 9.2 is breached, the Customer must inform APT as soon as possible but in any event no later than 36 hours after becoming aware of such a breach, whereupon APT will have a reasonable time to fix the problem and (if necessary) to supply the Customer with a corrected version of the Software or re-perform any relevant services. Subject to clause 9.7, this will be done without any additional charge to the Customer. If APT is unable to remedy any such issues within a reasonable time or APT does not think that it is a sensible way to deal with

the problem, then APT may elect to terminate the relevant Contract, take back the relevant Software and refund to the Customer any amount which the Customer has paid to APT under the relevant Contract for which Software has not been supplied.

9.4 Apart from the terms set out in this agreement, no conditions, warranties or other terms apply to the Software or its supply or licence under this agreement or to any services supplied under this agreement.

9.5 All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this licence or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.

9.6 The Customer is responsible for deciding whether or not the Software is suitable for the Customer's purposes and APT will not be responsible for this. It is not a term of this agreement that use of the Software will be uninterrupted or error-free.

9.7 APT will not be liable for breach of any of the warranties or other terms in this agreement to the extent that the breach arises from:

(a) use of the Software other than in accordance with normal operating procedures as notified to the Customer by APT; or

(b) any alterations to the Software made by anyone other than APT or someone authorised by APT; or

(c) any problem with the computer on which the Software is installed, any equipment connected to that computer or any other Software which is installed on that computer; or

(d) any abnormal or incorrect operating conditions; or

(e) any other hardware or Software being used with the Software, unless this use has been approved by APT (and anything set out in the Licence Form will be treated as having been approved by APT); or

(f) any failure by the Customer to carry out or provide suitable data in relation to any tests required by BACS before any Software can be used to process BACS payments.

10. Intellectual Property Rights

10.1 The Customer acknowledges that all Intellectual Property Rights in the Software and any subsequent versions provided by APT to the Customer belong and shall belong to APT, and the Customer shall have no rights in or to the Software other than the right to use it in accordance with the terms of this licence.

10.2 APT undertakes to defend the Customer from and against any claim or action that the possession, use, development, modification or maintenance of the Software (or any part thereof) infringes the Intellectual Property Rights of a third party (Claim) and shall fully indemnify and hold harmless the Customer from and against any losses, damages, costs (including all legal fees) and expenses incurred by or awarded against the Customer as a result of, or in connection with, any such Claim.

10.3 If any third party makes a Claim, or notifies an intention to make a Claim against the Customer, the Customer shall:

(a) as soon as reasonably practicable, give written notice of the Claim to APT, specifying the nature of the Claim in reasonable detail;

(b) not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of APT (such consent not to be unreasonably conditioned, withheld or delayed);

(c) give APT and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Customer, so as to enable APT and its professional advisers to examine them and to take copies (at APT's expense) for the purpose of assessing the Claim; and

(d) subject to APT providing security to the Customer to the Customer's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, take such action as APT may reasonably request to avoid, dispute, compromise or defend the Claim.

10.4 Without prejudice to clause 10.2 if any Claim is made, or in APT's reasonable opinion is likely to be made, against the Customer, APT may, at its sole option and expense:

(a) procure for the Customer the right to continue using, developing, modifying or maintaining the Software (or any part thereof) in accordance with the terms of this licence;

(b) modify the Software so that it ceases to be infringing;

(c) replace the Software with non-infringing software; or

(d)   repay to the Customer all sums which the Customer has paid to APT under this licence,

provided that if APT modifies or replaces the Software, the modified or replacement Software must comply with the warranties contained in Clause 9 and the Customer shall have the same rights in respect thereof as it would have had under those clauses had the references to the date of this licence been references to the date on which such modification or replacement was made.

11.   Exclusions and limitations

THIS IS AN IMPORTANT CLAUSE. ITS EFFECT IS TO LIMIT APT'S LIABILITY UNDER THIS AGREEMENT. THE CUSTOMER SHOULD READ IT CAREFULLY AND MAKE SURE THE CUSTOMER IS HAPPY WITH IT BEFORE SIGNING THIS AGREEMENT.

11.1   APT's liability for:

(a)   death or personal injury caused by APT's negligence or the negligence of APT's employees or agents; or

(b)   breach of the obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

(c)   fraud or fraudulent misrepresentation; or

(d)   any other liability which may not be excluded by law,

is not excluded or limited by this agreement, even if any other term of this agreement would otherwise suggest that this might be the case.

11.2   Other than as set out in clause 11.1, APT shall **not** be liable (whether for breach of contract, negligence or for any other reason) for any:

(a)   loss of profits;

(b)   loss of sales;

(c)   loss of anticipated savings;

(d)   loss of revenue;

(e)   loss or corruption of any software or data;

(f)   loss of goodwill;

(g)   loss of business opportunity;

(h)   loss of use of hardware, software or data;

(i)   indirect, consequential or special loss.

11.3   Subject to clauses 10, 11.1and 11.2, APT's total liability under each Contract and in relation to anything which APT has done or not done in connection with the Contract concerned (and whether the liability arises because of breach of Contract, negligence or for any other reason) shall be limited:

(a)   where the Licence Form states that the Software is licensed on a monthly basis, to an amount equal to 75% of the total amount paid or payable by the Customer under the Contract concerned during the Minimum Period; and

(b)   where the Licence Form states that the Software is not licensed on a monthly basis, to an amount equal to 75% of the total amount paid or payable by the Customer under the Contract concerned.

11.4   All dates supplied by APT for the delivery of the Software shall be treated as approximate only. APT shall not in any circumstances be liable for any loss or damage arising from any delay in delivery beyond such approximate dates.

12.   Confidentiality and Data Protection

12.1   APT will keep confidential any information which the Customer supplies to APT in connection with this agreement and the Customer must do the same in relation to any information which APT supplies to the Customer (which will include the Software).   This will not apply to any information which:

(a)   is available to the public other than because of any breach of this agreement;

(b)   is, when it is supplied, already known to whoever it is disclosed to in circumstances in which they are not prevented from disclosing it to others;

(c)   is independently obtained by whoever it is disclosed to in circumstances in which they are not prevented from disclosing it to others;

(d)   is trivial or obvious; or

(e)   is required to be disclosed by law or by any court or tribunal with proper authority to order its disclosure.

12.2 In the course of APT providing any services under this agreement, it may be necessary from time to time for APT to have access to personal data belonging to or retained by the Customer and for APT to process that personal data on behalf of the Customer.

12.3 In relation to any transfer and processing of personal data as referred to in clause 12.2:

(a) it is the intention of the parties that:

(i) the Customer will be the data controller; and

(ii) APT will be a data processor;

(b) the Customer will:

(i) ensure that it is fully and lawfully entitled to transfer the relevant personal data to APT so as to allow APT lawfully to process the personal data in accordance with this agreement on behalf of the Customer;

(ii) subject to APT complying with its obligations under this agreement, be responsible for ensuring that the processing of the personal data complies with the Data Protection Act 1998 (including the eight principles set out in the Data Protection Act 1998). This includes taking all steps necessary (including, where appropriate, obtaining consent from each of the relevant data subjects) so as to ensure that the transfer to APT of the personal data and its processing by APT in accordance with this agreement complies with the Data Protection Act 1998;

(c) APT will process the personal data only in accordance with:

(i) the terms of this agreement; and

(ii) any instructions given by the Customer from time to time;

(d) each party will take appropriate technical and organisational measures against:

(i) unauthorised or unlawful processing of the personal data; and

(ii) accidental loss or destruction of, or damage to, the personal data.

13. Export

13.1 Neither party shall export, directly or indirectly, any technical data acquired from the other party under this agreement (or any products, including software, incorporating any such data) in breach of any applicable laws or regulations (**Export Control Laws**), including United States export laws and regulations, to any country for which the government or any agency thereof at the time of export requires an export licence or other governmental approval without first obtaining such licence or approval.

13.2 Each party undertakes:

(a) contractually to oblige any third party to whom it discloses or transfers any such data or products to make an undertaking to it in similar terms to the one set out above; and

(b) if requested, to provide the other party with any reasonable assistance, at the reasonable cost of the other party, to enable it to perform any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with any Export Control Laws.

14. Term and termination

14.1 This agreement will commence on the date set out in the front sheet to it and it will then continue unless and until it is terminated in accordance with its terms. Each Contract will commence on the date set out in the relevant Licence Form. If the Licence Form states that the Software is licensed on a monthly basis, then that Contract will last for an initial minimum period of 24 calendar months (the "**Minimum Period**") unless terminated earlier in accordance with this clause 14 and will then continue on a monthly basis until terminated in accordance with this clause 14. Each additional month following the Minimum Period will be referred to in this agreement as a "**Licence Month**"). If the Licence Form does not state that the Software is licensed on a monthly basis then that Contract will continue indefinitely until terminated in accordance with this clause 14.

14.2 If the Licence Form states that the Software is licensed on a monthly basis, APT or the Customer may terminate that Contract by giving not less than one month's notice provided that such notice may only be given so as to expire either on the last day of the Minimum Period or on the last day of a Licence Month.

14.3 When APT elects to increase its fees in accordance with clause 8.7, the Customer shall be entitled to terminate this agreement and any affected Contract to which it is a party provided that not less than 15 days prior written notice is given to APT in advance of the first day of the Licence Month in which the amended fees will be introduced.

14.4 APT or the Customer may terminate a Contract if:

(a) the other party breaches the Contract and it is not possible to remedy that breach; or

(b) the other party breaches the Contract and it is possible to remedy that breach, but the other fails to do so within 30 days of being asked to do so.

For the purposes of this clause 14.3, in order for it to be possible to remedy a breach it must be possible to take steps so as to put the other party in the position it would have been in if the breach had never occurred.

14.5 APT may terminate this agreement (and all Contracts entered into in relation to it) if:

(a) any distress or execution is levied on any of the Customer's property or assets;

(b) the Customer makes or offers to make any arrangement or composition with creditors;

(c) any resolution or petition to wind up the Customer's business (other than for the purpose of amalgamation or reconstruction) is passed or presented or if a receiver or administrative receiver of the Customer's undertaking, property or assets is appointed or a petition presented for the appointment of an administrator.

(d) the Customer is subject to any proceedings which are equivalent or substantially similar to any of the proceedings under sub-clause (a), (b) or (c) under any applicable jurisdiction.

14.6 Apart from any other rights which APT might have, if the Customer breaches any Contract APT may suspend performance of any of its obligations or exercise of any of the Customer's rights under the relevant Contract until the Customer remedies the breach to the reasonable satisfaction of APT.

15. What happens on termination of a Contract or of this agreement

15.1 On termination of a Contract for any reason:

(a) The Customer's licence to use the Software supplied and licensed to it under that Contract will immediately terminate and the Customer must immediately stop using such Software; and

(b) The Customer must return all copies of the Software supplied and licensed to it under that Contract to APT or (if the copies are on media which is non-removable and forms part of equipment belonging to the Customer) delete all copies in such a way that they cannot be recovered. In either case the Customer must confirm to APT in writing that it has done this.

15.2 On termination of this agreement for any reason all Contracts will automatically terminate.

15.3 Termination of any Contract or of this agreement will not affect any accrued rights or liabilities which either APT or the Customer may have by the time termination takes effect.

16. Force Majeure

16.1 Neither party shall in any circumstances be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control, and in such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of delay or non-performance continues for three months or more, the party not affected may terminate this agreement by giving 15 days' written notice to the other party.

16.2 If termination occurs under clause 16.1, all sums paid to the Supplier by the Customer under this agreement shall be refunded to the Customer, except that the Supplier shall be entitled to payment on a quantum meruit basis for all work done before termination, provided that the Supplier takes all reasonable steps to mitigate the amount due

17. Insurance, Limitations and Liability

In addition to any other limitation agreed with you (and subject to professional rules), our liability for any claim in respect of services provided to you (whether in contract, negligence or otherwise) shall be limited to the proportion of the total of all damage, including costs, which may be fairly attributed to us (having regard to any contribution to such loss or damage by any other person) in proceedings for a contribution under the Civil Liability (Contribution) Act 1978 in England and Wales, and Section 3 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1940 in Scotland. Any limitation on our liability shall not apply to any liability on our part for death, personal injury or fraud, or where such limitation is prohibited by law.

Our maximum liability for loss or damage for breach of contract, breach of trust, negligence or otherwise (other than fraud) is £500,000 for any one transaction or matter or series of connected transactions or matters.

18. Other terms

18.1 The Customer may not sub-licence any of the Customer's rights under this agreement or any Contract. The Customer may not assign any of the Customer's rights or obligations under this agreement or any Contract without APT's consent. APT reserves the right to charge the Customer a reasonable administration fee in relation to any such assignment.

18.2 APT may sub-contract the performance of any of APT's obligations under this agreement or any Contract APT may assign this agreement or any Contract or any of APT's rights or obligations under this agreement or any Contract to someone else.

18.3 Risk in, and title to, any media bearing any Software or other information that may from time to time be supplied by APT to the Customer shall pass to the Customer on acceptance by the Customer.

18.4 APT will not be liable to the Customer for any breach of this agreement or any Contract which arises because of any circumstances which APT cannot reasonably be expected to control.

18.5 The Customer shall not, for the duration of this agreement, and for a period of six months following termination, directly or indirectly induce or attempt to induce any employee of APT who has been engaged in the provision, receipt, review or management of the Software or otherwise in connection with this agreement, to leave the employment of APT.

18.6 This agreement and any relevant Licence Form sets out all of the terms that have been agreed between APT and the Customer in relation to the subjects covered by it. Subject to clause 11.1(c), no other representations or terms shall apply or form part of this agreement or any Contract between the parties.

18.7 No variation of this agreement shall be effective unless in writing and signed by both parties (or their authorised representatives.

18.8 No term of this agreement or any Contract is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this agreement.

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

18.10 Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

18.11 If any court or competent authority finds that any provision of this agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this agreement shall not be affected.

18.12 If any invalid, unenforceable or illegal provision of this agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

18.13 This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this agreement, but all the counterparts shall together constitute the same agreement

18.14 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.

18.15 Any notice required to be given under this agreement shall be in writing and shall be delivered personally, or sent by pre-paid first-class post or recorded delivery or by commercial courier, to each party required to receive the notice as set out in a relevant Licence Form or as otherwise specified by the relevant party by notice in writing to each other party.

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

(a) if delivered personally, when left at the address and for the contact referred to in the relevant Licence Form;

(b) if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting; or

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

18.17 A notice required to be given under this agreement shall **not** be validly given if sent by e-mail.

18.18 The provisions of clauses 18.16 to 18.17 inclusive shall not apply to the service of any proceedings or other documents in any legal action.

18.19 This agreement is governed by English law. Both APT and the Customer submit to the exclusive jurisdiction of the English courts in relation to any dispute concerning this agreement or any Contract.