**Dated**                                                                                          **2014**

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# SPLASH ACCESS WIFI AGREEMENT

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**THIS AGREEMENT IS DATED**                                    **2014**

**BETWEEN**

(1)     **ORMIT SOLUTIONS LIMITED (T/A SPLASH ACCESS)**, incorporated and registered in England and Wales with company number 07892585 whose registered office is at 2A Church Lane, Leyland, Preston, England, PR25 3EJ ("**Ormit**"); and

(2)     **TBC**

**IT IS HEREBY AGREED**

**1.     INTERPRETATION**

1.1     The definitions and rules of interpretation in this clause apply in this agreement.

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|---|---|
| **Acceptance** | the acceptance of the Application by the Customer pursuant to clause 4. |
| **Application** | the website at [URL] to be hosted by Ormit pursuant to this agreement. |
| **Application Application Software** | the Application Software for the Application as described in the Proposal. |
| **Application Specification** | the specification for the Application set out in the Proposal. |
| **Authorised Users** | those employees, agents and/or independent contractors lof the Customer who are authorised by the Customer to use and access the Services and End User Data |
| **Business Day** | any day (other than a Saturday or Sunday) when UK clearing banks are generally open for normal business in the city of London. |
| **Charges** | the charges in respect of the Services set out in the Proposal. |
| **Confidential Information** | has the meaning given in clause 14.1. |
| **Demonstration Application** | means a demonstration or trial of the Application to be hosted by Ormit for the Demonstration Period pursuant to the Demonstration Licence on the terms and conditions of this agreement. |
| **Demonstration Licence** | a licence granted by Ormit pursuant to clause 4. |
| **Demonstration Period** | means 14 days from the Demonstration Application becoming available for use by the Customer. |
| **Effective Date** | the date on which Ormit grants access to the Services pursuant to a Demonstration Licence and if applicable and |

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|---|---|
| | subsequent Licence. |
| **End User** | a visitor to the Application. |
| **End User Data** | the data inputted on the Application by the end user customers of Customer. |
| **Force Majeure Event** | has the meaning given in clause 13. |
| **Intellectual Property Rights** | all intellectual property rights wherever in the world arising, whether registered or unregistered (and including any application), including copyright, know-how, confidential information, trade secrets, business names and domain names, trade marks, service marks, trade names, patents, petty patents, utility models, design rights, semi-conductor topography rights, database rights and all rights in the nature of unfair competition rights or rights to sue for passing off. |
| **Licence** | a licence purchased by the Customer pursuant to this agreement which entitles Authorised Users to access and use the Services and the End User Data in accordance with the terms and conditions of this agreement. |
| **Materials** | the content provided to Ormit by the Customer or uploaded by the Customer from time to time for incorporation in the Application. |
| **Privacy and Data Protection Requirements** | means the Data Protection Act 1998, The Data Protection Directive (95/46/EC), The Regulation of Investigatory Powers Act, The Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), The Electronic Communications Data Protection Directive (2002/58/EC), The Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI2426/2003) and all applicable Laws and Regulations relating to the processing of Personal Data and Privacy, including where applicable, the Guidance and Codes of Practice issued by the Information Commissioner or any other supervisory authority, and the equivalent of any foregoing and any relevant jurisdiction. |
| **Proposal** | the proposal submitted by Ormit and accepted by the Customer and dated [          ] 2014. |
| **Services** | the design, build and hosting of the Application and related services to be provided pursuant to this agreement the functional specifics for which are described in the Proposal. |
| **Service Package** | the service package agreed to be provided by Ormit to the Customer as detailed in the Proposal. |
| **Term** | has the meaning set out in clause 12. |

1.2    Clause and schedule headings do not affect the interpretation of this agreement.

1.3    References to clauses and schedules are (unless otherwise provided) references to the clauses and schedules of this agreement.

1.4    In the event and to the extent only of any conflict between the clauses and the schedules, the clauses shall prevail.

1.5    Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.

1.6    A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.7    References to **including** and **include(s)** shall be deemed to mean respectively including without limitation and include(s) without limitation.

1.8    References to **content** include any kind of text, information, image, or audio or video material which can be incorporated in a website for access by a visitor to that website.

## 2.    SERVICES

2.1    Ormit shall perform its obligations in accordance with the Proposal. In particular:

(a)    by [        ] 2014 Ormit shall set up the Demonstration Application; and

(b)    Ormit shall, as soon as reasonably practicable after Acceptance, provide the Services in accordance with this agreement.

## 3.    CUSTOMER RESPONSIBILITIES

3.1    The Customer shall:

(a)    provide Ormit with:

(i)    all necessary co-operation in relation to the Services and compliance with this agreement; and

(ii)   copies of and all necessary access to such information, including but not limited to the Materials as may be required by Ormit in order to permit Ormit to comply with its obligations under the agreement,

(b)    comply with all applicable laws and regulations with respect to its activities under this agreement (including but not limited to its storing, processing and/or use of the End User Data);

(c)    carry out all other Customer responsibilities set out in this agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, Ormit may adjust any agreed timetable or delivery schedule as reasonably necessary;

(d)    ensure that that Authorised Users use the Services and End User Data in accordance with this agreement and shall be responsible for any Authorised User's breach of this agreement;

(e) obtain and shall maintain all necessary licences, consents, and permissions necessary for Ormit, its contractors and agents to perform their obligations under this agreement including without limitation the Services (including not limited by ensuring that it owns, has been licensed or otherwise has full rights, consent and authority to use all Intellectual Property Rights in or associated with the Materials).

(f) ensure that its network and systems comply with the relevant specifications provided by Ormit from time to time (including but not limited to by ensuring that Microsoft Internet Explorer 8 or any later versions are available at all times); and

(g) the solely responsible for procuring and maintaining its network connections and telecommunications links from its systems and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

## 4. APPLICATION DEMONSTRATION AND ACCEPTANCE

4.1 Ormit may choose (at its sole discretion) to grant the Customer a personal, non-transferable, non-exclusive licence (the "**Demonstration Licence**") for limited use of the Services during the Demonstration Period solely for the purposes of evaluation of the Services by the Customer for use in the Customer's business.

4.2 The Customer acknowledges and agrees that access to the Services will automatically "time out", (that is to say, cease to operate) at the end of the Demonstration Period, unless the Customer agrees in writing to accept the Services and become committed for the Term in accordance with the terms and conditions contained in this agreement ("**Acceptance**").

4.3 During the Demonstration Period the Demonstration Licence may be terminated:

(a) immediately by Ormit by giving notice to the Customer, if the Customer is in breach of any applicable provisions of this Agreement;

(b) by the Customer at any time during the Demonstration Period on written notice to Ormit; or

(c) upon the Acceptance by the Customer at any time during the Demonstration Period.

4.4 Upon termination of the Demonstration Period, if Acceptance has not occurred and the Customer has not been granted a Licence by Ormit, the Customer shall completely delete all electronic copies of all or any part of the Application Software and any other related documentation in their possession or control.

4.5 Save for the matters detailed in clause 8.1, Ormit shall have no liability of any kind in any circumstances whatever to the Customer in respect of the use of the Services, or Application Software during the Demonstration Period. In particular, Ormit shall have no liability in any circumstances whatever for any data loss or corruption arising during the Demonstration Period and the Customer agrees it has sole responsibility for protecting its data and any End User Data during the evaluation of the Services throughout the Demonstration Period.

4.6     No representations, conditions, warranties or other terms of any kind are given in respect of the Services, Application Software or the Application accessed during the Demonstration Period and all statutory warranties and conditions are excluded to the fullest extent possible by law.

**5.     LICENCE**

5.1     Subject to the restrictions set out in this clause 5 and the other clauses of this agreement, Ormit hereby grants to the Customer a non-exclusive, non-transferable right to permit the Authorised Users to use the Services during the Term.

5.2     In relation to all Licences and any Demonstration Licence, the Customer undertakes that it shall only use the Services in accordance with this agreement and shall not permit, assist, illicit or allow any third party to otherwise do so.

5.3     Each Authorised User shall keep a secure password for his use of the Services and the Customer warrants that such password shall be frequently changed and that each Authorised User shall keep his password confidential.

5.4     The Customer shall not use the Services and/or the End User Data in any way which infringes breaches or is likely to give rise to a breach of any Privacy and Data Protection Requirements.

5.5     The Customer shall not access, store, distribute, publish on the Application or transmit any viruses, or any material during the course of its use of the Services and/or the End User Data that:

(a)     is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;

(b)     facilitates illegal activity;

(c)     depicts sexually explicit images;

(d)     promotes unlawful violence;

(e)     is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or

(f)     in a manner that is otherwise illegal or causes damage or injury to any person or property;

and Ormit reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.

5.6     The Customer shall not:

(a)     except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:

(i)     and except to the extent expressly permitted under this agreement, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any

portion of the Application Software in any form or media or by any means; or

(ii) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Application Application Software; or

(b) access all or any part of the Services in order to build a product or service which competes with the Services; or

(c) use the Services to provide similar products or services to third parties; or

(d) licence, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services available to any third party except the Authorised Users; or

(e) attempt to obtain, or assist third parties in obtaining, access to the Services other than as provided under this clause 5.

5.7 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and, in the event of any such unauthorised access or use, promptly notify Ormit.

## 6. CHARGES AND PAYMENT

6.1 The Charges shall be those set out in the Proposal by reference to the specific Service Package selected by the Customer and agreed to be provided by Ormit. The Charges may be increased to reflect any change to the Application Specification or the Services to be provided by Ormit where requested by the Customer or to reflect changes required by law.

6.2 Ormit may invoice the Customer for the Charges at any time or after Acceptance.

6.3 The Customer shall pay to Ormit the Charges set out in Ormit's invoice within 7 days of the date of Ormit's invoice.

6.4 All Charges are:

(a) exclusive of VAT, which shall be added to the invoice at the appropriate rate;

(b) non-cancellable and non-refundable;

(c) payable in pounds sterling.

6.5 If the Customer fails to pay any amount payable by it under this agreement, Ormit shall be entitled, but not obliged:

(a) to charge the Customer interest on the overdue amount. Such interest shall be payable by the Customer forthwith on demand, from the due date up to the date of actual payment, after as well as before judgment, at the rate of 3% per annum above the base rate for the time being of the Bank of England. Such interest shall accrue on a daily basis and be compounded quarterly. Ormit reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; or

(b)     to terminate the Services and disable the Application with immediate effect and without notice.

## 7.     WARRANTIES

7.1     Each of the parties warrants to the other that it has full power and authority to enter into and perform this agreement.

7.2     Ormit shall, during the Term, perform the Services with reasonable care and skill.

7.3     Subject to clause 7.4 and 7.5, Ormit warrants that the Application will perform substantially in accordance with the Application Specification throughout the Term. If the Application does not so perform, Ormit shall, as soon as reasonable practicable, for no additional charge, carry out any reasonable work necessary in order to ensure that the Application substantially complies with the Application Specification.

7.4     The Customer acknowledges and accepts that Ormit uses third party hardware and software for the network configuration and therefore Ormit does not warrant that the Customer's use of the Services and access to the End User Data will be uninterrupted and error-free throughout the Term.

7.5     The warranty set out in clause 7.3 shall not apply to the extent that any failure of the Application to perform substantially in accordance with the Application Specification is caused by any act or omission of the Customer, its employees, agents or other representatives or any Authorised User, or any Materials.

7.6     This agreement sets out the full extent of Ormit's obligations and liabilities in respect of the supply of the Services. All conditions, warranties or other terms concerning the Services which might otherwise be implied into this agreement or any collateral contract (whether by statute or otherwise) are hereby expressly excluded.

## 8.     LIMITATION OF REMEDIES AND LIABILITY

8.1     Nothing in this agreement shall operate to exclude or limit Ormit's liability for:

(a)     death or personal injury caused by its negligence; or

(b)     any breach of the terms 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

(d)     any other liability which cannot be excluded or limited under applicable law.

8.2     Neither party shall be liable under or in connection with this agreement or any collateral contract for any:

1.     loss of revenue;

2.     loss of actual or anticipated profits;

3.     loss of contracts;

4.     loss of the use of money;

5.    loss of anticipated savings;

6.    loss of business;

7.    loss of opportunity;

8.    loss of goodwill;

9.    loss of reputation;

10.   loss of, damage to or corruption of data; or

11.   any indirect or consequential loss,

in each case howsoever arising, whether such loss or damage was foreseeable or in the contemplation of the parties and whether arising in or caused by breach of contract, tort (including negligence), breach of statutory duty or otherwise.

8.3    Ormit expressly excludes and shall not be liable for any damage, losses or expenses incurred by the Customer as a result of:

(a)    any short term technical failure resulting in the unavailability of the Services and/or the End User Data;

(b)    any claims against the Customer by any End User and/or the third party in relation to the collection, processing, transfer, use or otherwise of the End User Data.

8.4    Subject to clause 8.1, Ormit's aggregate liability in respect of claims based on events in any calendar year arising out of or in connection with this agreement or any collateral contract, whether in contract or tort (including negligence) or otherwise, shall in no circumstances exceed 100% of the total Charges payable by the Customer to Ormit under this agreement in that calendar year.

## 9.    INTELLECTUAL PROPERTY RIGHTS

9.1    The Customer acknowledges and agrees that, subject to clause 9.2, Ormit and/or its licensors own all Intellectual Property Rights in the Application, the Application Software and all Intellectual Property Rights in any works arising in connection with the performance of the Services by Ormit ("**Works**").

9.2    Both parties acknowledge and agree that the Customer shall own all right, title and interest in and to all of the End User Data and once such End User Data has been provided to and/or made available to the Customer by Ormit, the Customer shall have responsibility for the security, protection and lawful use, storing and processing of such End User Data in accordance with the Privacy and Data Protection Requirements.

9.3    The Customer shall indemnify Ormit against all damages, losses and expenses arising as a result of any action or claim that the Materials infringe any Intellectual Property Rights of a third party.

9.4    Ormit shall indemnify the Customer against all damages, losses and expenses arising as a result of any action or claim that the Application, Application Software

and/or the Works infringe the Intellectual Property Rights of a third party in the UK, other than infringements referred to in clause 9.3.

9.5     The indemnities in clause 9.3, clause 9.4, and clause 10.3 are subject to the following conditions:

(a)     the indemnified party promptly notifies the indemnifier in writing of the action or claim;

(b)     the indemnified party makes no admissions or settlements without the indemnifier's prior written consent;

(c)     the indemnified party gives the indemnifier all information and assistance that the indemnifier may reasonably require; and

(d)     the indemnified party allows the indemnifier complete control over the litigation and settlement of any action or claim.

9.6     The indemnities in clause 9.3, clause 9.4, and clause 10.3 may not be invoked to the extent that the action or claim arises out of the indemnifier's compliance with any designs, specifications or instructions of the indemnified party.

## 10.     APPLICATION CONTENT

10.1    Unless otherwise expressly agreed in writing, Ormit shall have no obligation and does not commit under the terms of this agreement to continue to develop, design or amend the Application once Acceptance has taken place.

10.2    The Customer may continue to develop and amend the content of Application and upload the Materials.  The Customer shall ensure that the Materials do not infringe any applicable laws, regulations or third party rights (such as material which is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred or acts of terrorism, menacing, blasphemous or in breach of any third party Intellectual Property Rights) ("**Inappropriate Content**").

10.3    The Customer shall indemnify Ormit against all damages, losses and expenses arising as a result of any action or claim that the Materials constitute Inappropriate Content.

10.4    Ormit may include the statement "Powered by Splash Access" on the face of the Application as accessed by End Users and shall be entitled to require End Users to:

(a)     tick a  box to accept the Customer's terms of use/privacy policy; and

(b)     tick a box to accept direct contact from the Customer for marketing/promotional purposes.

## 11.     DATA PROTECTION

11.1    In this clause 11, "Personal Data" has the meaning given in the Data Protection Act 1998.

11.2    Ormit warrants that, to the extent it processes any Personal Data contained within the End User Data on behalf of the Customer:

(a)     it shall only provide/make available such End User Data to the Customer; and

(b) it has in place appropriate technical and organisational security measures against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data.

## 12. TERM AND TERMINATION

12.1 This agreement shall, subject to clause 4, and unless terminated as provided in this clause 12, commence on the Effective Date and shall continue for an Initial Licence Term of 12 months (plus the Demonstration Period) ("**Initial Term**"), and, thereafter this agreement shall be automatically renewed for successive periods of 12 months ("**Renewal Term**"), unless:

(a) either party notifies the other party of termination in writing at least 90 days before the end of the Initial Term or any Renewal Term, in which case, subject to clause 12.5, this agreement shall terminate upon the expiry of the Initial Term or Renewal Term (as applicable); or

(b) otherwise terminated in accordance with the provisions of this agreement.

12.2 Any Demonstration Period and the Initial Term together with any subsequent Renewal Term shall together constitute the "**Term**".

12.3 Either party may terminate this agreement immediately at any time by written notice to the other party if:

(a) that other party commits any material breach of its obligations under this agreement which (if remediable) is not remedied within 30 days after the service of written notice specifying the breach and requiring it to be remedied; or

(b) that other party:

(i) ceases to trade (either in whole, or as to any part or division involved in the performance of this agreement); or

(ii) becomes insolvent or unable to pay its debts within the meaning of the insolvency legislation applicable to that party; or

(iii) a person (including the holder of a charge or other security interest) is appointed to manage or take control of the whole or part of the business or assets of that party, or notice of an intention to appoint such a person is given or documents relating to such an appointment are filed with any court; or

(iv) the ability of that party's creditors to take any action to enforce their debts is suspended, restricted or prevented or some or all of that party's creditors accept, by agreement or pursuant to a court order, an amount of less than the sums owing to them in satisfaction of those sums; or

(v) any process is instituted which could lead to that party being dissolved and its assets being distributed to its creditors, shareholders or other contributors (other than for the purposes of solvent amalgamation or reconstruction).

12.4    On termination of this agreement for any reason the Licence granted by Ormit under this agreement shall terminate immediately and the Customers' access to the Services and End User Data shall cease with immediate effect.

12.5    On expiry or termination of this agreement, all provisions of this agreement shall cease to have effect, except that any provision which can reasonably be inferred as continuing or is expressly stated to continue shall continue in full force and effect, including but not limited to clauses 1, 6, 8, 9, 14 and 22.

## 13.    FORCE MAJEURE

13.1    The definition in this clause applies in this agreement.

| "**Force Majeure Event**" | any event arising which is beyond the reasonable control of the affected party (including any industrial dispute affecting any third party, governmental regulations, fire, flood, disaster, civil riot or war). |
| --- | --- |

13.2    A party who becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in performing its obligations under this agreement shall forthwith notify the other and shall inform the other of the period for which it is estimated that such failure or delay will continue. The affected party shall take reasonable steps to mitigate the effect of the Force Majeure Event.

## 14.    CONFIDENTIALITY

14.1    The definition in this clause applies in this agreement.

| "**Confidential Information**" | all information, whether technical or commercial (including all specifications, drawings and designs, disclosed in writing, on disc, orally or by inspection of documents or pursuant to discussions between the parties), where the information is: |
| --- | --- |

        (a)    identified as confidential at the time of disclosure; or

        (b)    ought reasonably to be considered confidential given the nature of the information or the circumstances of disclosure.

14.2    Each party shall protect the Confidential Information of the other party against unauthorised disclosure by using the same degree of care as it takes to preserve and safeguard its own confidential information of a similar nature, being at least a reasonable degree of care.

14.3    Confidential Information may be disclosed by the receiving party to its employees, affiliates and professional advisers, provided that the recipient is bound in writing to maintain the confidentiality of the Confidential Information received.

14.4    The obligations set out in this clause 14 shall not apply to Confidential Information that the receiving party can demonstrate:

        (a)    is or has become publicly known other than through breach of this clause 14; or

(b)     was in the possession of the receiving party prior to disclosure by the other party; or

(c)     was received by the receiving party from an independent third party who has full right of disclosure; or

(d)     was independently developed by the receiving party; or

(e)     was required to be disclosed by a governmental authority, provided that the party subject to such requirement to disclose gives the other party prompt written notice of the requirement.

14.5    The obligations of confidentiality in this clause 14 shall not be affected by the expiry or termination of this agreement.

14.6    This clause 14 supersedes the terms of the non-disclosure agreement between Ormit and the Customer dated 11 June 2014, which is hereby terminated.

## 15.     NOTICES

15.1    A notice given under this agreement:

(a)     shall be in writing in the English language (or be accompanied by a properly prepared translation into English);

(b)     shall be sent for the attention of the person, and to the address, or e-mail address given in this clause 15 (or such other person, address, fax number or e-mail address as the receiving party may have notified to the other, such notice to take effect five days from the notice being received); and

(c)     shall be:

(i)     delivered personally; or

(ii)    sent by e-mail; or

(iii)   sent by pre-paid first-class post, recorded delivery or registered post; or

(iv)    (if the notice is to be served or post outside the country from which it is sent) sent by registered airmail.

15.2    The addresses for service of notice are:

(a)     for the Customer:

Address:
For the attention of:
E-mail:

(b)     for Ormit:

Address:[                    ]
For the attention of: Tim Ormrod
E-mail: timo@ormitsolutions.co.uk

15.3    A notice is deemed to have been received:

(a)     if delivered personally, at the time of delivery; or

(b)     in the case of e-mail, at the time of transmission, provided a confirmatory copy is sent by first-class pre-paid post or by personal delivery before the end of the next Business Day; or

(c)     in the case of pre-paid first class post, recorded delivery or registered post, 48 hours from the date of posting; or

(d)     in the case of registered airmail, five days from the date of posting; or

(e)     if deemed receipt under the previous paragraphs of this clause 15.3 is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is not a public holiday in the place of receipt), when business next starts in the place of receipt.

15.4    To prove service, it is sufficient to prove that the notice was transmitted by fax to the correct fax number or e-mail address of the relevant party or, in the case of post, that the envelope containing the notice was properly addressed and posted.

## 16.    PUBLICITY

All media releases, public announcements and public disclosures by either party relating to this agreement or its subject matter, including promotional or marketing material, shall be co-ordinated with the other party and approved jointly by the parties in writing prior to release.

## 17.    ASSIGNMENT

Neither party may assign or transfer any of its rights or obligations under this agreement, in whole or in part, without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed.

## 18.    ENTIRE AGREEMENT

This agreement constitutes the entire agreement between the parties regarding its subject matter and supersedes and replaces any and all prior agreements, understandings or arrangements between the parties, whether oral or in writing, with respect to the same.  No representation, undertaking or promise shall be taken to have been given or be implied from anything said or written in negotiations between the parties prior to this agreement except as expressly stated in this agreement.  Neither party shall have any remedy in respect of any untrue statement made by the other upon which that party relied in entering into this agreement (unless such untrue statement was made fraudulently) and that party's only remedies shall be for breach of contract as provided in this agreement.

## 19.    THIRD PARTY RIGHTS

This agreement is made for the benefit of the parties to it and is not intended to benefit, or be enforceable by, any other person and the Contracts (Rights of Third Parties) Act 1999 is expressly excluded.

## 20. VARIATION AND WAIVER

20.1    A variation of this agreement shall be in writing and signed by or on behalf of both parties to this agreement.

20.2    A waiver of any right under this agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given. No waiver shall be implied by taking or failing to take any other action.

20.3    Unless specifically provided otherwise, rights arising under this agreement are cumulative and do not exclude rights provided by law.

## 21. SEVERANCE

21.1    If any provision (or part of a provision) of this agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

21.2    If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

## 22. GOVERNING LAW AND JURISDICTION

22.1    This agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the law of England.

22.2    The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been entered into on the date stated at the beginning of it.