

OPTIMUM SME FINANCE LIMITED

STANDARD TERMS AND CONDITIONS

FOR

DEBT PURCHASE AGREEMENT

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1 NOTIFICATION OF BOOK DEBTS

- 1.1 You must Notify us as soon as possible on or before the date of Commencement in relation to outstanding Book Debts on the date of Commencement and after the date of Commencement, at least once every seven days or as otherwise agreed with us.
- 1.2 You shall only be required to Notify us of those Book Debts that are described in paragraph 2. We may require you to Notify any other Book Debts to us or cease to Notify any Book Debts, or class of Book Debts, at any time.
- 1.3 Every Notification is to be in such form and manner as we may specify for this purpose and you must provide us at the same time (or thereafter if required by us) with such supporting evidence of the existence and value of each such Book Debt or such other documents that we may require.
- 1.4 You will Notify separately every Non-Compliant Debt and on that separate Notification you will mark clearly the reason why such Book Debt is a Non-Compliant Debt.
- 1.5 You will not Notify us of any Book Debt more than once, unless we require you to do so.
- 1.6 Where you deliver a Notification to us in respect of a Scottish Debt (including any Notification made by EDI), the Notification will be deemed to contain the following wording:

"We hereby:

- (i) assign to you each Book Debt listed in this Notification which is a Scottish Debt; and
- (ii) confirm that those Scottish Debts, to the extent that you do not yet have a complete and unencumbered title thereto, are trust property of the trust contained in clause 9 of the Debt Purchase Agreement between you and us."

2 OWNERSHIP OF BOOK DEBTS AND GOODS

- 2.1 In respect of each Book Debt which has been assigned or transferred to us pursuant to condition 1 or otherwise, you agree that:
- (a) the benefit of any Related Rights to that Book Debt have also been assigned or transferred to us at the same time as the Book Debt is assigned or transferred to us;

- (b) if, for any reason, title to or the benefit of that Book Debt (or its Related Rights) fails to vest in us absolutely and effectively, you will hold such Book Debt and/or its Related Rights and/or the proceeds of the same on trust for us absolutely, separate from your own monies, howsoever such proceeds may arise; and
- (c) you will hold upon trust for us any VAT bad debt relief (or similar relief) obtained by you in respect of a Book Debt which has been assigned or transferred (or purportedly assigned or transferred) to us or otherwise held in trust for us under this Agreement; and
- (d) You will plainly mark all Goods referred to in condition 2.1(b) with our name as owner and deal with them only as we may ask you to do orally or in writing.
- (e) The provisions of conditions 2.1 (b) and 2.1 (c) establish a trust under English law in relation to all Book Debts other than Scottish Debts. The equivalent trust in relation to Scottish Book Debts is created in clause 9 of the Agreement. The provisions of conditions 2.1 (b) and 2.1 (c) apply to both the English trust hereby created and, as appropriate to that Scottish trust created under clause 9 of the Agreement.

2.2 If we require, you will promptly and at your expense:

- (a) execute, stamp and deliver to us a formal written assignment of any Book Debt and/or its Related Rights, in the form that we may require; and/or
- (b) take any other action necessary to perfect or complete the assignment or transfer to us of, or our title to, or the trust in our favour in relation to, any Book Debt and/or its Related Rights and the proceeds of the same including, without limitation, confirmation of the assignment to the Debtor.

3 CREDIT LIMITS AND APPROVED AND DISAPPROVED BOOK DEBTS

3.1 We will classify Book Debts notified to us pursuant to condition 1 as either Approved or Disapproved in our absolute discretion.

3.2 We may classify a Book Debt as Disapproved at any time and for any reason, including but not limited to the following:

- (a) age (that is at any time after the expiry of the Recourse Period as set out in paragraph 11 of the Schedule);
- (b) dispute;
- (c) the Debtor claims to be unable to pay because of legal constraints (other than in respect of Protected Book Debts by reason of the Insolvency of the Debtor) or acts or orders of government;

- (d) it having been Notified to us more than 7 days after the Goods to which the Book Debt relates having been Delivered;
 - (e) if, and to the extent that, any Book Debt when aggregated with all other Outstanding Notified Book Debts owed by the same Debtor when expressed as a percentage of all Outstanding Notified Book Debts exceeds for the time being the Concentration Percentage;
 - (f) if, and to the extent that, any Book Debt when aggregated with all other Outstanding Notified Book Debts owed by the same Debtor exceeds for the time being any relevant Credit Limit;
 - (g) if, and to the extent that, any Export Debt when aggregated with all other Outstanding Notified Export Debts owed by the same Debtor when expressed as a percentage of all Outstanding Notified Export Debts exceeds for the time being the Export Concentration Percentage;
 - (h) if, and to the extent that, any Export Debt when aggregated with all other Outstanding Notified Export Debts owed by the same Debtor exceeds for the time being any relevant Export Limit;
- 3.3 We may in our absolute discretion classify as Approved a previously Disapproved Book Debt or part thereof.
- 3.4 If a Book Debt is classified as Disapproved, we may, in our absolute discretion, effect Recourse in respect of the Book Debt and require you at any time to repurchase it from us at the Repurchase Price. Where such a Book Debt is a Scottish Debt, the terms of condition 10.6 shall apply.
- 3.5 We may, without giving any reason, by written notice to you establish or increase a Credit Limit in relation to any Book Debt. We may, without giving any reason, by oral or written notice decrease or withdraw any Credit Limit.
- 3.6 Book Debts will be deemed to apply in relation to a Credit Limit in the order in which they are Notified.
- 3.7 You undertake not to disclose to the Debtor or any other party whether any Book Debt is Approved or Disapproved, or the amount of or absence of any Credit Limit.
- 3.8 In any application by you to us for the establishment of a Credit Limit you will supply to us the full correct name, company number and address of the Debtor and any other information supporting the application that we may reasonably require.
- 3.9 You acknowledge that in establishing or reducing Credit Limits or classifying Book Debts as Approved or Disapproved we are not acting as a credit reference agency under the Consumer Credit Act 1974 and that we have no obligation to you in relation to any Credit Limit except as specifically provided for in this Agreement.

4 THE PURCHASE PRICE, YOUR ACCOUNTS AND YOUR PAYMENTS TO US

4.1 Types of Account

In order to operate the facility created by this Agreement, we will open and maintain for you certain accounts in our books. These will include:

- (a) a Sales Ledger Control Account; and
- (b) a Client Account; and
- (c) a Trust Account; and
- (d) an Electronic platform – E3 – to aid the notification of Book Debts to us; and
- (e) such other accounts and records as we consider appropriate, or that we implement from time to time.

4.2 Records

- (a) The records kept in the Client Account record all entries between you and us and are calculated on a running account basis.
- (b) We shall provide you with access to your accounts in order that you may see the entries that we may make in any of your accounts with us, including records of transfers between accounts.
- (c) In the event of any dispute between you and us, a statement of account, certified as true and correct by one of our directors or our auditors, shall be treated as adequate proof of indebtedness and in any proceedings shall, except in the case of manifest error, be conclusive evidence of the amount so certified.

4.3 Calculation of Purchase Price

- (a) Subject to the other provisions of this Agreement, the Purchase Price of each Book Debt (including its Related Rights) will be calculated as the total amount payable by the Debtor in respect of the Book Debt (including any VAT or similar duty) after deducting from that amount any discount or other allowance allowed or allowable by you to the Debtor and the Discount Charge (and if applicable the Debtor Protection Supplement) in respect of that Debt.
- (b) We may in our sole discretion make a credit to the Sales Ledger Control Account without deducting any of the items in accordance with condition 4.3(a). We shall consequently aggregate and debit all such items at any time thereafter either to the Sales Ledger Control Account and/or the Client Account.

- (c) Unless we agree otherwise the Purchase Price of all Book Debts shall be payable in Sterling.

4.4 Credit of Purchase Price of Outstanding Book Debts

- (a) We will credit the Purchase Price of each Notified Book Debt to your Sales Ledger Control Account:
 - (i) In respect of Book Debts in existence at the date of Commencement, either on the date of Commencement or the date upon which they are Notified to us;
 - (ii) In respect of Book Debts arising after the date of Commencement, up to 48 hours following the day that you Notify the Book Debt to us.

4.5 Transfer to Client Account

- (a) We will debit the Purchase Price of each Book Debt from your Sales Ledger Control Account and credit the same to your Client Account on the first Working Day following the later of:
 - (i) the Collection Date; and
 - (ii) the Working Day on which we identify that payment as being in respect of the relevant Book Debt, or
 - (iii) in the case of Protected Book Debts in accordance with condition 12.11 (c) but subject to conditions 4.5 (d).
- (b) We may in our discretion transfer the Purchase Price of a Book Debt from your Sales Ledger Control Account to your Client Account before being notified that we have received cleared funds in full payment of that Book Debt. If we make such a transfer and we subsequently become aware that the payment in question has not cleared, we may reverse all and any accounting entries made in respect of that transfer.
- (c) We shall be entitled at any time to debit the Client Account in respect of all Your Obligations to us, whether or not arising under this Agreement, present, future, contingent or prospective. Such liability includes any liability you may have to us as a customer of any of our clients or for VAT. If the amount cannot be immediately ascertained we will be entitled to make a reasonable estimate thereof. In particular, we will debit any Prepayments that we make to you from time to time on account of any Book Debts in accordance with condition 4.6(a). Until such liabilities have been so debited we may set off the amount thereof against moneys otherwise payable by us to you. Any amount so debited to the Client Account (except in respect of credit notes issued by you or Recourse) will be treated in all respects as a Prepayment.

- (d) Without prejudice to conditions 8.1(a) and 8.5(c) you must notify us of the date of Insolvency of any Debtor and deliver to us any claim for payment under condition 4.5(a)(iii), upon the form prescribed by us for such purpose from time to time supported with all documents (original or otherwise) as we may specify, within 28 days of the date of Debtor Failure.

4.6 Payments to You

- (a) Subject to the other provisions of this Agreement, we may, in our sole discretion, pay to you, including at your request:
 - (i) Prepayments, in the amount of the Prepayment Percentage when applied to the Notified value of an Approved Book Debt; and
 - (ii) additional sums, over and above the amount stated in condition 4.6(a)(i) (if any)
 - (A) in respect of an Disapproved Book Debt where such payment may cause the Prepayments in respect of Book Debts then Outstanding from any one Debtor to be in excess of any applicable Credit Limit provided that such Prepayment would not cause the total Prepayments made in respect of all Debtors to exceed the Funding Limit, and
 - (B) subject always to the overriding condition contained in condition 4.8.
- (b) Any Disapproved Book Debt in respect of which we may make a Prepayment as set out in condition 4.6(a) shall not qualify as a Protected Book Debt.

4.7 Payment method and accounting

- (a) In order to request a payment under condition 4.6(a), you must do so in the manner agreed between us. We will make payment to you by cheque unless you request payment by BACS, CHAPS or FPS in which event you shall pay to us such charges for doing so as we shall notify to you either at that time or from time to time.
- (b) We will debit your Client Account with each amount paid to you under condition 4.7(a) on the Working Day that we give instructions to our bankers to make that payment to you by BACS, CHAPS or FPS, the day we draw a cheque or as soon as possible thereafter.
- (c) You will repay to us immediately on our demand:
 - (i) any Prepayment made in relation to an Approved Book Debt in the event that such Book Debt shall become Disapproved;

- (ii) any Prepayment made in relation to an Disapproved Book Debt upon our request; and
- (iii) any payment made by us to you in respect of any Book Debt to the extent that payment by the Debtor or any guarantor of the Book Debt is subsequently recalled under the law of the country of the payer or by reason of any decision of a court or tribunal of competent authority in that country.

In either case we may debit such sum to your Client Account.

- (d) Unless we agree otherwise in writing you will pay to us immediately upon demand any debit balance owing to us on the Client Account at any time and/or any amount by which the debit balance on the Client Account at any time exceeds the Funding Limit at that time.
- (e) Without prejudice to any other right of ours pursuant to this Agreement, we shall be entitled to debit your Client Account with an Overpayment Fee in any event that the balance on your Client Account exceeds the Funding Limit (whether pursuant to our acceding to your request for Prepayment or as a result of the operation of any other provision of this Agreement), without any obligation to give you notice of our intention to do so.

4.8 Set-Off

- (a) We may at any time set off and without notice, by debiting funds from your Client Account (even when in debit), any moneys due from you to us or to any Associate of ours, whether actually, prospectively or contingently, and whether alone or jointly with others, and whether pursuant to this Agreement or otherwise (including any liability you may have to us as a Debtor of another client of ours), against any sums due from us to you.
- (b) We may at any time without notice combine or consolidate your accounts with us.
- (c) We may give effect to our rights under conditions 4.8(a) and 4.8(b) by converting currencies where required by us including for any of the purposes set out in condition 6.5. Where we so require we shall do so in accordance with condition 6.5(f) and in order to do so we may make a reasonable estimate of any contingent or prospective liabilities and may accelerate such liabilities.
- (d) You may not exercise any right of set-off or counterclaim against moneys due from you to us. If a deduction is required by law, you will increase the amount of the payment we receive to such amount as is equivalent to the amount of the payment before the deduction. Any sums due from us to you shall be paid to you in such manner and at such time as we may agree.

5 CHARGES FOR OUR SERVICES

5.1 Fees

- (a) You will pay to us:
- (i) a Survey Fee (if one is specified in paragraph 22.1 of the Schedule) on the day that you sign this Agreement (if we have agreed, in our discretion, to defer such payment until the date of Commencement);
 - (ii) a Set-Up Fee (if one is specified in paragraph 22.1 of the Schedule) on the day that you sign this Agreement;
 - (iii) a Service Charge for each Book Debt Notified by you under condition 1 whether the Book Debt is Approved or Disapproved and before taking into account any refund, discount or other allowance allowed or allowable to the relevant Debtor;
 - (iv) the Discount Charge;
 - (v) any audit fees, for each audit, of each site at which you conduct your business, that we carry out, as we deem necessary, on the day that we attend your premises for this purpose;
 - (vi) a fee in respect of a trust account in your name but for which we shall have sole rights of withdrawal;
 - (vii) a fee in respect of our E3 account facility which we will operate for you. For the avoidance of any doubt, we will debit no less than £100 per calendar month to your Client Account, in aggregate, for the operation of a trust account and the operation of your E3 portal which allows you to notify your Book Debts in accordance with condition 1;
 - (viii) a fee in a minimum amount of £250 should you fail to complete the required monthly overdue reporting on or before the 20th day of each month informing us/your insurer of whether or not there are any Book Debts that are over 60 days due; and
 - (ix) such other fees as we may notify you from time to time or as specified in this Agreement.
- (b) We will debit the Service Charge to your Client Account immediately upon Notification of Book Debts or monthly in the case of any Shortfall.
- (c) You will pay to us, on the last day of the month (calculated and accrued during the month), a Refactoring Charge in respect of each Outstanding Book Debt for each month, or part thereof, that such Book Debt (or part thereof) remains Outstanding beyond the Refactoring Charge Period.

- (d) Where a Minimum Annual Service Charge (“MASC”) applies we shall calculate monthly one twelfth of the MASC. We will debit any Shortfall if the monthly proportion of the MASC is not reached as set out in clause 5.1 (a) (iii) and 5.1 (b).
- (e) We will add VAT to our fees if applicable.

5.2 Expenses

You will pay to us:

- (a) all bank charges and other costs and expenses (including any VAT, stamp duty and other imposts) that we may incur (whether by our agents or directly) in respect of any bank account to which payments of Debts are to be credited; and
- (b) all legal, bank and other costs and expenses (plus any VAT if applicable) that we may incur (including our own administrative and other costs) in any way relating to:
 - (i) negotiating, entering into, registering, varying, assigning, adding to, enforcing or waiving the provisions of this Agreement and/or any related agreement, security, guarantee, charge, mortgage, warranty or indemnity or attempting or purporting to do any of the foregoing;
 - (ii) collecting, enforcing, securing or protecting our rights to or verifying the status or amount of any Book Debt, or attempting or purporting to do any of the foregoing;
 - (iii) transmitting funds to you, presenting or in any other way relating to the receipt and handling of cheques and other instruments that are not met upon first presentation; and/or
 - (iv) assessing or purporting to assess your financial position should we be required to do so at any time.

5.3 Discount Charge

You will pay to us:

- (a) a Discount Charge, which we will calculate and debit to your Client Account daily (plus VAT where applicable).
- (b) For the purpose of calculating the Discount Charge, in establishing the balance on the Client Account a Book Debt shall be deemed to be outstanding until the 6th Working Day following the Collection Date or in respect of a Protected Book Debt until the 6th Working Day following compliance with clause 12.11(c).

5.4 We may, in our discretion and without prejudice to condition 4.8, deduct from any payment to be made by us to you any sum due from you to us at any time.

5.5 All our charges are quoted in this Agreement exclusive of Value Added Tax.

6 EXPORT DEBTS

6.1 Export Debts

6.2 You hereby warrant and undertake that if you enter into a Supply Contract pursuant to which an Export Debt is created, that you will Notify any such Export Debt as if it were a Non-Compliant Debt. We shall be entitled to treat any Export Debt in the same way as a Non-Compliant Debt.

6.3 When you Notify us of an Export Debt you will be treated as giving warranties, in addition to those applicable to all other Book Debts, to us in respect of each such Export Debt that:

- (a) payment of the Export Debt will be legally enforceable against the Debtor to whom the invoice is addressed in the country in which the Debtor is located;
- (b) the Debtor has all authorities, licenses and permits necessary for him lawfully to purchase and import the Goods and to pay for them in the United Kingdom or the country in which the Debtor is located, by their due date for payment either to you or, following a notice of assignment, to us;
- (c) the exportation of the Goods and the payment by the Debtor for such Goods does not breach the laws of the United Kingdom, the country in which the Debtor is located or any other country or territory.

6.4 We may require you at any time to deliver to us (and not to the Debtor), the original (and any copies that we may require) of each invoice, credit note, bill of lading, airway bill, customs form, commercial and consular invoice, certificate of origin, insurance document, bill of exchange (drawn to our order and/or blank endorsed), draft or negotiable instrument, and all and any such other documents as we may require for the enforcement of our rights in relation to any Export Debt. Upon receipt we shall forward them at your expense to the Debtor (or such other persons or organisations as are appropriate).

6.5 We may, in our sole discretion:

- (a) pay the Purchase Price (and/or any Prepayment on account of the Purchase Price) in the currency of the Export Debt where it is expressed in a currency other than Sterling;
- (b) pay the Purchase Price (and/or any Prepayment on account of the Purchase Price) of an Export Debt in Sterling, where such Export Debt is expressed in a currency other than Sterling;

- (c) if we receive funds from any Debtor on account of an Export Debt in a currency other than Sterling, convert such monies to Sterling;
- (d) for the purpose of calculating the Repurchase Price of an Export Debt payable otherwise than in Sterling convert such monies to Sterling;
- (e) for the purpose of computing the Discount Charge, Service Charge and Refactoring Charge or other fees and charges (if any) in respect of an Export Debt payable in a currency other than Sterling (for calculation purposes only) convert the value of the Export Debt to Sterling; and
- (f) whenever we shall be required to convert currency for any of the purposes in conditions 6.4(a) to (e) above we shall undertake such conversion at our Cost of Funds. We shall calculate the Sterling equivalent of such Debts by dividing the sum to be converted by the sum of the Cost of Funds. We shall calculate the currency equivalent of Sterling sums by multiplying the sum to be converted by the sum of the Cost of Funds.

6.6 We shall be entitled, without reference to you, to debit all bank charges, fees and commissions incurred in such conversion together with all resulting exchange rate losses to your Client Account. Where the cost of the same is not immediately ascertainable we shall be entitled to debit your Client Account with a sum equal to our reasonable estimate thereof and make the appropriate adjustment to your Client Account when the actual cost is known by us.

6.7 Any disagreement as to the conversion and costs of conversion shall be conclusively determined by certificate in accordance with condition 4.2 (c).

6.8 We may in our sole discretion establish an Export Limit. All of our rights and remedies in respect of any breach by you of the Funding Limit shall apply mutatis mutandis to any breach of any Export Limit.

7 SALES LEDGER ADMINISTRATION AND COLLECTION OF BOOK DEBTS

7.1 We alone may enforce payment of and collect any Book Debt and we alone may institute, commence, defend, compromise or settle proceedings in respect of any Book Debt in such manner and upon such terms as we may think fit. For such purposes we may use your name and (whether or not you are appointed as our agent under condition 7.5) you will co-operate with us to the fullest extent at your expense in any such enforcement collection or proceedings including the production of such documents and the giving of such evidence as may be necessary for such enforcement or collection or proceedings.

7.2 Unless we have appointed you as our agent under condition 7.5 you will not collect or attempt to collect any Book Debt, except any Book Debts that we have indicated need not be Notified to us, and then only until we tell you that you may not.

7.3 If paragraph 17 of the Schedule specifies that your facility is Disclosed, a notice of assignment is required, you must ensure that:

- (a) on the Working Day following the date of Commencement there is sent to every Debtor by whom any Book Debt is then owing a notice; and
- (b) every invoice and credit note representing a Book Debt purchased by us and issued after the date of Commencement bears a prominent and legible notice;

in each case stating that the Book Debt has been purchased by us and is payable only to us. Every such notice shall be in a form specified by us.

7.4 If paragraph 17 of the Schedule specifies that your facility is Confidential a notice of assignment is not required however we may nevertheless give you notice, at any time, that we require you to give such Notice to Debtor(s) in respect of all or any Book Debts, in the manner stated in condition 7.3. We may give like notice to Debtors at any time, at your expense.

7.5 If we agree to appoint you as our agent for the purposes of maintaining and administering the accounts of Debtors and of sending statements and demands to Debtors and of enforcing payment of Book Debts you will accept any such appointment. You undertake in the event of such an appointment:

- (a) to act promptly and efficiently, at your expense, in carrying out such tasks in accordance with any directions that we may give to you from time to time; and
- (b) to retain on our behalf all records and documents on or by which any Book Debts purchased by us are recorded or evidenced until the full discharge of all Your Obligations or any earlier delivery to us of such records or documents upon our demand; and
- (c) to observe and comply with all of our requirements with regard to the methods of collecting and enforcing Debts; and
- (d) not to hold yourself out as our agent for any purpose other than the tasks mentioned above in this condition nor to hold yourself out as our agent for any purposes except while the agency remains in effect; and
- (e) from the time of such appointment (until written notice from us of the end of this requirement) to furnish us promptly with such statements, schedules and reports of the accounts of Debtors and at such intervals as we may specify at any time orally or in writing.

7.6 We may at any time terminate your appointment as agent for any purposes by written or oral notice to you and, upon such termination, you will, if we require and at your expense, immediately send to every Debtor by whom any Book Debt is then owing or

becomes owing a notice as described in condition 7.3 in spite of and in addition to any earlier such notices.

- 7.7 Whether or not you are appointed as our agent under condition 7.5:
- (a) you will immediately upon receipt by you deliver to us or, if we so require, direct to our bank account as specified by us (and meanwhile hold in trust for us) all the identical monies cheques and other instruments of payment (duly endorsed where necessary to effect collection) received by you in or on account of payment of any Book Debt or its Related Rights;
 - (b) you will not mark or endorse such cheque or other instrument other than in our favour;
 - (c) you will not bank for your own account any payment, cheque or other instrument received or recovered in respect of a Book Debt or Related Rights. You will hold any such payment, cheque or other instrument on trust for us pending our receipt of it;
 - (d) save for a payment delivered to us in accordance with condition 7.7(a) above, unless we agree otherwise you will not make any payment to us (or, if so directed by us, to our bankers or financiers) from your own monies which is or which purports to be a payment on account of any Book Debt or its Related Rights.
- 7.8 Any payment, dividend, distribution or other benefit, received (whether by you or us) for or on account of any Book Debt (including but not limited to from the estate of a Debtor following the date of Insolvency of that Debtor), notwithstanding any contrary appropriation by the Debtor, will be appropriated firstly against Approved Book Debts, secondly against Disapproved Book Debts and thirdly in or towards discharging any liabilities you may have to us. Any remaining balance will be paid to you or any other person entitled to it.
- 7.9 You undertake to give immediate instructions to any banker or other person with whom you maintain an account to pay to us or (if we ask you) direct to Our Bankers the proceeds of any credit transfer, relating to any Book Debt, received in that account. You will furnish Our Bankers with such instructions and/or indemnity as they may require in order that they may effect collection for our benefit of any cheques made payable to you that are not transferable.
- 7.10 If you are not required at the date of Commencement to give Notice to Debtors but we subsequently require you to disclose our interest in any Book Debts and/or you cease to act as our agent, we shall be entitled to increase the Service Charge to the equivalent of 10% of all Book Debts (both in respect of all Outstanding Book Debts at that time and all Book Debts subsequently Notified to us) to cover, amongst other things, our anticipated additional operating expenses in our getting in of the Book Debts and you expressly acknowledge that such increase constitutes a fair and reasonable pre-

estimate of our likely costs and expenses in performing this service on your behalf.

7.11 Disputes

If a Debtor disputes any Book Debt, you will:

- (a) notify us immediately and use your best endeavours to settle the dispute, subject always to our rights under condition 7.1; and
- (b) promptly perform all your continuing obligations to the relevant Debtor under the Supply Contract giving rise to that Book Debt.

7.12 Credit Notes

- (a) You will Notify to us immediately, in writing, (separately from any Notification of any Book Debts) any credit note that you issue in respect of a Book Debt (including any other allowance or discount given), together with such original or copy documentation as we may require evidencing such credit note or allowance or discount. You acknowledge that we may by notice to you require that credit notes will not be issued without our prior written consent.
- (b) The amount of each credit note, allowance or discount Notified to us under condition 7.12(a) will be treated as a reduction to the Purchase Price of the Book Debt to which it relates and will be debited to your Sales Ledger Control Account. You will if we require pay us an amount equal to the amount of any such credit note, allowance or discount for crediting to your Client Account.
- (c) We shall, without prejudice to the other provisions of this Agreement, charge a Service Charge on the Notified Value of all credit notes in the same way as we shall do so in respect of Book Debts and for this purpose all references to Service Charge (including Service Charge in respect of Book Debts, Minimum Annual Service Charge and Shortfall) shall as appropriate include a Service Charge in respect of credit notes.
- (d) Except with our written prior consent, you will not issue a credit note to any Debtor identified by us.

7.13 Returned, Repossessed and Other Goods in your Possession

- (a) If any Goods are returned or refused by a Debtor, or are repossessed to you, you will set those Goods aside, mark them with our name as owner and hold them for us as bailee (and at no cost to us) until either the Goods are resold or otherwise disposed of in accordance with our direction (without us being obliged to procure such sale or disposal) or we are fully reimbursed in relation to that Book Debt.
- (b) Where you have notified a Book Debt to us but you have not, at the date of the Notification, Delivered the Goods to the Debtor, we own the Goods

(whether finished or unfinished) to which such Notified Debts relate. For this purpose, you transfer to us (from the date that the benefit of the Book Debt is assigned to us under condition 1) all your right, title and interest to such Goods, including where applicable your rights under the relevant contracts between you and any person from whom you have ordered or procured the goods to which the Book Debt relates.

- (c) We or any person appointed by us may enter any of your premises where such returned or repossessed Goods or Goods falling into condition 7.13(a) are located for the purpose of enforcing, securing or protecting our rights to such Goods.
- (d) We or any person appointed by us may enter any of your premises where unfinished Goods are located and at your expense complete the manufacture of those Goods or fulfil any collateral Supply Contract in order to obtain payment in full of any Book Debt which you have Notified to us.

7.14 Credit Balances

- (a) If our records show that a credit balance appears on any account with a Debtor, we may (and you irrevocably authorise us to) pay that credit balance to the relevant Debtor and debit it to your Client Account.

8 REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS

8.1 You represent and warrant to us that:

- (a) you have disclosed to us every material fact or matter known to you that might influence us in deciding whether to:
 - (i) enter into or continue operating this Agreement; and/or
 - (ii) set, vary or cancel your Funding Limit and/or any Credit Limit and/or any Export Limit and/or any Concentration Limit and/or any Protected Debtor Limit; and/or
 - (iii) classify a Book Debt as Approved or Disapproved; and/or
 - (iv) accept any person to be a guarantor, warrantor or indemnifier of Your Obligations and liabilities to us;
- (b) all written information supplied to us about your business, assets and financial condition is true, complete and up-to-date;
- (c) that at all times your assets exceed your liabilities and you are able to discharge all of your liabilities in full in accordance with section 123 of the Insolvency Act 1986, together with any interest, as they fall due;

- (d) that you have obtained and maintained all such insurance policies (including, without limitation, product liability insurance) as would be maintained by prudent organisations carrying on business of the type carried on by you and have complied in all material respects with the terms and conditions of such policies;
- (e) that you have complied with all your obligations under Data Protection Legislation including any additional requirements we may specify as set out in or as a result of this Agreement.

8.2 Book Debt specific

You represent and warrant to us in respect of each Book Debt that:

- (a) The Supply Contract giving rise to that Book Debt:
 - (i) is valid, binding and enforceable against the Debtor;
 - (ii) is governed by English law or Scots law or other law approved by us in writing, and provides for the Debtor's submission to the jurisdiction of the English courts or the Scottish courts or the courts of the other approved jurisdiction;
 - (iii) contains no prohibition against assignment of the Book Debt or any Related Right by you;
 - (iv) is not regulated by the Consumer Credit Act 1974 or subordinate legislation;
 - (v) provides for payment in Sterling or such other currency that we have previously approved in writing;
 - (vi) provides for terms of payment (unless otherwise agreed by us in writing) that provide for such Book Debt to be paid by no longer than your normal Payment Terms;
 - (vii) is upon your standard terms and conditions of business, in the form previously approved by us;
 - (viii) is made in the ordinary course of your business; and
 - (ix) you hold all necessary consents, licences and authorities to enter into the Supply Contract and for the Debtor to pay the Debt to us.
- (b) that you have taken all reasonable steps to ascertain the creditworthiness of the Debtor prior to the delivery of Goods to the Debtor and are satisfied that the Debtor is solvent and able to pay its debts as they fall due;

- (c) the Book Debt has not previously been Notified to us;
- (d) the Book Debt has not been sold, assigned, mortgaged, charged or otherwise disposed of or encumbered to any other person or party, nor has any agreement been made to do so;
- (e) no supplier to you or other third party will retain title to all or any part of any Goods or the proceeds of sale of such Goods which are the subject matter of the Book Debt;
- (f) you have performed all your obligations under the Supply Contract which are required for enforcement of the Book Debt including, without limitation the delivery of Goods, and upon our request you will provide evidence in a form and substance satisfactory to us of the performance of the Supply Contract;
- (g) the Debtor has no right of set-off, contra, deduction, abatement, defence or counterclaim in respect of the Book Debt and you have no obligations to the Debtor other than under any Supply Contract, and you have no agreement with the Debtor for retrospective discounts or otherwise whereby the amount of the Book Debt may be reduced except in accordance with the Supply Contract;
- (h) the Debtor has an established place of business and is not an Associate;
- (i) each Book Debt is a bona fide Book Debt and each Notification solely contains bona fide Book Debts within the ambit of and compliant with, conditions (a) to (h) above.
- (j) you will not notify us of any Book Debts that:
 - (a) include sales to any associate company, any company linked by common ownership and/or directorship;
 - (b) arise where the underlying Supply Contract includes sale or return, stock cleansing provisions and/or any other encumbrance;
 - (c) arise as a result of cash/pro-forma sales, sales to private individuals and any accounts where reciprocal trading features, regardless of whether you contra or cheque swap, unless specifically approved by us.

8.3 Repetition

- (a) The representations and warranties contained in conditions 8.1 will be deemed to be repeated on a daily basis from the date of this Agreement until the date on which this Agreement is terminated.
- (b) The representations and warranties contained in condition 8.2 will be deemed to be repeated on a daily basis in respect of each Book Debt until that Book

Debt has been fully and finally unconditionally discharged.

8.4 Non-Compliant Debts

- (a) Without prejudice to condition 1, you must Notify all and any Non-Compliant Debts to us separately from any other Debts. You must comply with the remaining provisions of condition 1 in all respects and in addition you must provide to us full details of each and every failure of any Non-Compliant Debt to comply with the representations and warranties given by you to us in condition 8.2(a) – 8.2(i) and/or supply us with a copy of the contractual terms and conditions, identifying where they differ from the standard terms previously approved by us, at the time that such Non-Compliant Debts are Notified to us. Each Non-Compliant Debt shall be Disapproved, although in relation to any particular Non-Compliant Debt, we may, in our sole discretion, categorise any particular Non-Compliant Debt as Approved.

8.5 Financial Undertakings and other information

- (a) You will:
 - (i) keep such records as regards the Book Debts as we may require, separate from all other records, conspicuously noted as belonging to us and insured against their loss with such policy noted with us as the first loss payee; and
 - (ii) keep such accounting records as we may require, in such format as we may specify; and
 - (iii) ensure that your accounts for each financial year are audited in accordance with current law or legislation, are compiled in accordance with generally accepted accounting principles in the jurisdiction that applies to them and certified to be so by a qualified accountant; and
 - (iv) prepare at least once in each week a reconciliation of your bank account to identify any Debtor payments and provide a copy of such reconciliation to us upon our request.
- (b) You will send us:
 - (i) management accounts (monthly or quarterly, to be agreed) for your business in the format that we may require within 30 days of each period end (or within such other time frame as we may specify);
 - (ii) as soon as they become available, and in any event within 120 days of each of your financial year-ends, a signed copy of your audited (if relevant) or unaudited abridged annual accounts (consolidated where appropriate and in any event, to include the audited consolidated

- annual accounts of any company of which you are a subsidiary or a subsidiary undertaking within the meaning of the Companies Act 2006);
- (iii) promptly (within 5 Working Days) upon request to supply, a list of your creditors and Debtors on an open item basis, to be accurately aged and to include all payments made to date; and
 - (iv) promptly (but in any event within 5 Working Days) upon request to supply, a list of any and all Debtor accounts that are either in dispute whether you have passed to solicitors, debt collectors, agents or any other third party for collection, settlement or arbitration activities or otherwise; and
 - (v) promptly (but in any event within 5 Working Days) upon request to supply, the proof of delivery (“PoD”) mechanism which supports the creation of your Book Debts. You agree to hold in trust and to our order all PoD’s and confirm that ALL invoices are raised post-delivery of the goods or completion of the service; and
 - (vi) promptly (but in any event within 5 Working Days) upon request, such other information as we may require from time to time including, but not limited to, information concerning your business and financial affairs, or those of any person providing a guarantee, warranty or indemnity of your obligations and liabilities to us;
- (c) you will exercise due care and prudence in the control of credit and keep us informed at all times of the creditworthiness of your Debtors and (without prejudice to any of your other obligations under this Agreement) of any counterclaims, rights of set-off, deduction, abatement or contra-items raised by any of them at any time;
 - (d) if we require, you will instruct your auditors to report directly to us at your expense;
 - (e) if we require, you will permit or procure the verification of Book Debts in such manner as we may require and you consent to the appointment by us of Premier Audit Company Limited (or such other person nominated by us) as our agent to verify the existence and amount of each Book Debt due from each of your Debtors, the due date for payment and, where the Book Debt is overdue, the expected date of payment; and
 - (f) notify us immediately upon becoming aware of any matter or circumstance that constitutes (or would, with the passing of time or the giving of notice, constitute) a Termination Event.

8.6 Negative Undertakings

- (a) You will not:
- (i) sell, assign, mortgage, charge or otherwise dispose of or encumber any Book Debt, any other debts and/or the Related Rights thereto and/or the proceeds of such Book Debt or Related Rights or your rights under this Agreement or any other agreement, or agree or purport to do so, whether by you directly or by division or subsidiary, other than in our favour;
 - (ii) without our prior written consent, rescind, terminate, waive or modify (or purport to rescind, terminate, waive or modify) any of the terms on which you supply Goods and, in particular, you will not extend the time for payment of any Book Debt nor purport to do so;
 - (iii) without our prior written consent, waive or modify (or purport to waive or modify) any of the terms on which you purchase Goods from your suppliers and, in particular, you will not permit any supplier to retain title to Goods supplied to you;
 - (iv) without prejudice to condition 8.6(a) that you will not sell, transfer, lease, licence, part with possession or dispose of or grant any interest in or relating to your goodwill including diverting or encouraging the diversion of any of your sales following orders from customers to any of your Associates or any other party;
 - (v) without our prior written consent, alter, or seek to alter, your constitution, composition, legal personality or control, nor create or acquire any, or any interest in, any entity that would constitute an Associate or otherwise alter your relationships with your Associates.

8.7 Positive Undertakings

- (a) You will:
- (i) comply in all material respects with all legislation and regulatory requirements relating to your business or assets where failure to do so might adversely affect your business, assets or financial condition;
 - (ii) keep confidential all information provided by us in relation to the creditworthiness of Debtors or details of, or reasons for, designating any Book Debt as Approved or Disapproved;
 - (iii) promptly perform your outstanding or continuing obligations under any Supply Contract, including without limitation the repair and/or maintenance of Goods, the payment of all carriage and shipping charges under the Supply Contract or any related contract;

- (iv) give to us at least 5 Working Days prior written notice of any application for an administration order or an arrangement with creditors or for an interim order or any other Insolvency or analogous proceedings;
- (v) if and when required by us give Notice to Debtors;
- (vi) ensure your centre of main interest and that of each of your subsidiaries (as defined by Section 1159 of the Companies Act 2006), for the purposes of Council Regulation (EC) Number 1346/2000 of 29 May 2000 on Insolvency Proceedings, including but not limited to your headquarter functions, your management and control of your business and/or properties, remain located at all times within England and Wales or Scotland and you may not move the same without our prior written consent;
- (vii) in relation to sole trader and unlimited partnership Debtors, your directors, shareholders, employees, partners and/or members, designated members or partners (if you are an LLP), ensure that the processing by you of information about them (including any transfer of information to us and by us to those that finance us) complies in all respects with the requirements of Data Protection Legislation, you have given them notice of the manner in which we may process the information that you provide to us, it is up to date and is accurate;
- (viii) ensure that you have all necessary and appropriate authority to transfer personal data to us pursuant to 8.7(a) (vii) and that you will keep full records of all authorities and all other documentation that may evidence your compliance with Data Protection Legislation.
- (ix) indemnify us against all losses costs charges interest and expenses incurred by us at any time and arising from or in any way connected with:
 - (A) our entering into or enforcing, exercising or protecting our rights under this Agreement or any guarantee, indemnity, warranty or security created in relation to Your Obligations;
 - (B) our enforcing or attempting to enforce payment of any Book Debt or settling or compromising any dispute with or claim by a Debtor or any other person in relation to any Book Debt;
 - (C) our acting on instructions appearing to come from you and given by telephone, facsimile or other electronic means, regardless of the capacity of the person actually giving those instructions;
 - (D) any stamp, documentary or similar tax or duty (including any penalty for late payment) imposed on or paid in respect of this

- Agreement or any guarantee, indemnity, warranty or security;
- (E) the securing by us of any release of any Book Debt from any trust charge or other encumbrance;
 - (F) any claims against us by any Debtor (save any claim arising solely from our own default) in relation to any Book Debt and/or any Related Rights;
 - (G) any indemnity that we may be required to give to Our Bankers in connection with the collection on our behalf of any cheque or other instrument made payable to you;
 - (H) any breach by you of any of Your Obligations, this Agreement, any warranty or other obligation of any person under this Agreement or any related guarantee, indemnity, warranty or security;
 - (I) all loss, and damage, cost, expense (including legal fees), administrative sanction, fine, penalty, action or other liability that we incur as a result of any breach of clause 8.1(e), 8.7(a)(vii), 14, and/or Data Protection Legislation and in particular, without limiting the foregoing, you shall indemnify us in respect of any loss and, damage, cost, expense (including legal fees), administrative sanction, fine, penalty, action or other liability incurred as a result of enquiry or complaint by a data subject or enquiry or investigation by the Information Commissioners Office or such other organisation carrying out the same or similar functions as in place at the relevant time.
- (b) You will comply with all procedures for the operation of this Agreement that we may make known to you from time to time and to assist us in every way to safeguard our interests under this Agreement and to procure that all your employees and agents and, if you are a company, all your directors and other officers so assist us.
 - (c) You will create such security in our favour on your undertaking and assets as we may specify for your performance of your obligations under this Agreement, or in respect of any Book Debt (or its Related Rights) which has been assigned or transferred to us pursuant to condition 1 but which fails to vest in us absolutely and effectively.
 - (d) You will take all steps and sign such other additional documents, including assignments of Book Debts or Related Rights, as we may require for the preservation of our interests in Book Debts purchased by us under this Agreement and/or in mitigating any liabilities owed to us or losses we may suffer.

- (e) You will tell us immediately of any dispute between you and a Debtor and provide us with full particulars of such dispute. You will also tell us immediately of any Debtor becoming entitled, or alleging that it has become entitled, to a right of set-off, deduction, abatement, defence or counterclaim in respect of any Book Debt by reason of sums owed by you to the Debtor which arise other than under any Supply Contract.
- (f) You will notify us of any credit insurance policy held by you in respect of your Book Debts and, as we may direct, you will procure that at all times we are noted on the policy as co-insured and/or first loss payee. You undertake to maintain and comply with the terms of any credit insurance policy including paying all premiums on time and you will immediately inform us if the policy should lapse or be cancelled, or its terms are varied,

9 VALUE ADDED TAX

9.1 VAT Bad Debt Scheme

- (a) When the terms of the VAT Bad Debt Scheme would apply to a Book Debt but for its assignment to us then we shall be at liberty to:
 - (i) reassign such Book Debt to you; and/or
 - (ii) lodge in your name a proof or claim of debt in the Insolvency of the Debtor.
- (b) You undertake to:
 - (i) accept the reassignment of such Book Debt;
 - (ii) pay to us forthwith a sum equivalent to the VAT included in such Book Debt that you may be able to reclaim under the VAT Bad Debt Scheme; and
 - (iii) use your best endeavours to recover all VAT that you are entitled to reclaim; and
 - (iv) hold in trust for us any dividend or other sum (other than VAT unless payment under condition 9.2 has not been paid in which case any VAT shall also be held on such trust) representing such Book Debt recovered by you in proportion to the amount of such Book Debt.
- (c) The Minimum Annual Service Charge, Service Charge and the Refactoring Charge together with all and any other fees, costs and charges payable by you pursuant to this Agreement (other than the Discount Charge) are specified and/or calculated exclusive of VAT, which shall be additionally payable by you.
- (d) Where any steps are taken pursuant to this condition 9 to reassign a Book Debt

which is a Scottish Debt, the terms of condition 10.6 shall apply.

10 RECOURSE

10.1 We shall be entitled to exercise Recourse as follows:

- (a) in respect of any Book Debt included in a separate Notification under condition 1.4 or any other Disapproved Book Debt, as soon as or at any time after it is notified or, if later, upon or after its becoming Disapproved;
- (b) in respect of any Approved Book Debt, that becomes Disapproved under condition 3.2 upon its becoming Disapproved;
- (c) in respect of any Book Debt that the Debtor claims to be unable to pay owing to any rule or regulation of any Government or war or civil commotion or the circumstances in the territory in which the Debtor is situated, at any time after the event giving rise to the claim;
- (d) in respect of any Book Debt comprising solely discount or other deduction wrongly claimed or deducted by the Debtor, as soon as we become aware of the claim or deduction;
- (e) in respect of any other unpaid Book Debt (other than, and to the extent that, such Book Debt is, and remains, a Protected Book Debt), at the end of its Recourse Period or upon any earlier Insolvency Proceedings in relation to the Debtor by which the Book Debt is owing.

10.2 We may exercise Recourse by written notice to you or by debiting the Repurchase Price to the Client Account. We shall be entitled to receive payments in respect of any Book Debt and apply any such payment against the Repurchase Price but we shall remain the owner of every Book Debt in respect of which we exercise Recourse until the Repurchase Price has been fully discharged either by your payment of it to us or by our applying it in the discharge of any amount payable by us to you.

10.3 If we have notified you that we are exercising our right of Recourse in respect of all Outstanding Book Debts then we shall not be obliged to transfer title in any such Book Debt to you until we have been paid the Repurchase Price in respect of all Book Debts subject to that notice.

10.4 You undertake (in addition to the undertakings in condition 8) to pay to us the amount of any Book Debt (other than, and to the extent that, such Book Debt is, and remains, a Protected Book Debt) that remains unpaid after its Recourse Period so that your liability under this undertaking may be enforced against you as principal debtor without the requirement of any prior demand on the Debtor by whom such Book Debt is payable;

- 10.5 Without prejudice to conditions 4.5, 15.2 and 15.3, in calculating the Repurchase Price we may exclude from such calculation any un-cleared remittance. If following payment of the Repurchase Price such remittances clear then we shall credit the same to your Client Account or, if this Agreement has been terminated, if the Repurchase Price has been discharged we shall forward such sum to you by BACS (or, upon your request, by CHAPS) otherwise we shall give credit for such sum against the Repurchase Price.
- 10.6 Where we exercise Recourse in respect of any Scottish Debt, then at your expense:
- (a) We may give you, in which case you will accept, a re-assignment of such Scottish Debt once you have paid the Repurchase Price and give notice to the Debtor of such reassignment;
 - (b) You will, as trustee of the trust created under clause 9 of this Agreement, transfer any such Scottish Debt to us as beneficiary of the trust so that we can then re-assign the same to you, and when we do so, paragraph (a) above will apply to that reassignment;
 - (c) Where notice to the Debtor has already been given in respect of the Scottish Debt, you will, if we so require, give a notice to the Debtor of the reassignment or we may give like notice ourselves.

11 INFORMATION AND YOUR ACCOUNTS AND RECORDS

11.1 We may at any time:

- (a) inspect, verify and/or (at your expense) take copies of any of your records or documents on or by which any Book Debt is recorded or evidenced; and/or
- (b) take possession of any such records or documents included in the Related Rights; and/or
- (c) inspect any records or documents relating to your financial position or the results of your operations.

For such purpose any of our officers or authorised agents may enter upon any premises at which you carry on business or at which any of your property is situated at any time during business hours being not less than eight hours in any Working Day and you undertake to keep us informed at all times of the situation of all such records and documents.

11.2 You authorise us:

- (a) to furnish your bankers, auditors or agents of yours with such information in our possession relating to your affairs and the Book Debts purchased by us as any of them may require at any time; and
- (b) at any time to obtain from any of your bankers, auditors or agents any

information in their possession that we may then require regarding the state of your accounts or your financial affairs; and

- (c) to share fees with any agent of yours for introduction of business to us; and
- (d) to obtain from Debtors their consent to the taking of references from their bankers;.

11.3 You warrant and undertake that you have given your existing bankers, auditors and agents, and will give to any banker, auditor and agent whom you may in future appoint, the requisite authority for the purpose of condition 11.2(b) and that you will instruct your auditors to report at your expense on any audited accounts directly to us if we ask you to do so at any time.

12 DEBTOR PROTECTION SUPPLEMENT

12.1 Where paragraph 20 of the Schedule states that the facility is to include a Debtor Protection Supplement the following provisions of this condition shall be operative and constitute the Debtor Protection Supplement. Before this condition can be operative you must complete and submit to us, with such supporting documents as we may require, a pre-approval form (**the Pre-Approval Form**).

12.2 The basis upon which we shall provide protection against non-payment of certain of your Book Debts is set out in this condition 12. For the avoidance of any doubt we are not providing you with insurance and this shall not be construed as the same. Where there is any conflict between this condition 12 and any other provisions in the Agreement, the terms of this condition shall prevail. For the avoidance of doubt, however, save as varied by this condition 12 all the other provisions of the Agreement will apply to Book Debts covered by the Debtor Protection Supplement.

12.3 This Debtor Protection Supplement shall begin on the first day of the Protected Period and, subject to the provisions of condition 12, although we will automatically grant a further Protected Period unless we have given you prior written notice, we may, but are not obliged to, grant such further Protected Periods upon such terms as we may agree and specify to you. This facility covers Protected Book Debts relating to Supply Contracts with Protected Debtors where a Protected Debtor Limit has been obtained on the e-bonded system or otherwise in accordance with procedures specified by us from time to time. The following shall apply in relation to Protected Debtor Limits:

- (a) until we notify you in writing, including electronic or facsimile transmission, the Protected Debtor Limit in relation to any Debtor owing Book Debts will be nil;
- (b) we may reduce or cancel any Protected Debtor Limit according to our underwriting judgment and by sending electronic or facsimile notice to you;
- (c) any reduction or cancellation of a Protected Debtor Limit shall be effective

upon such notification; and

- (d) upon receipt of such notification, you shall provide us with a list of all outstanding Protected Book Debts relating to the relevant Protected Debtor, unless we advise in writing to the contrary.

12.4 To the extent that any Protected Book Debt owing by a Protected Debtor is paid or otherwise satisfied and is within an existing Protected Debtor Limit any Protected Book Debt owing by that Protected Debtor, that at the time of such payment or satisfaction is outside that Protected Debtor Limit, shall fall within it to the extent that the Protected Debtor Limit is fully utilised, and if more than one, in order of age.

12.5 We will provide protection for the Protected Percentage of the Loss arising from one or more Protected Debtors failing to pay their Protected Book Debt as a result of Debtor Failure. The amount payable will be calculated in accordance with condition 12.11, and will be subject always to the other applicable terms of this condition 12.

12.6 In respect of any Protected Book Debt, we shall not be liable to pay more than the Protected Percentage of the Protected Debtor Limit and any payment we make to you will take into account the Minimum Retention.

12.7 The right to require you to repurchase any Disapproved Book Debts under condition 10 or any Book Debt under condition 15.2 (b) is varied in relation to Protected Book Debts within a Protected Debtor Limit so that it only applies to the amount of the Book Debt that is not payable by us under this Debtor Protection Supplement provided such Book Debt remains a Protected Book Debt.

12.8 You will pay to us:-

- (a) the Debtor Protection Fee on the gross value (including VAT) of all Book Debts assigned to us during the Protected Period, and irrespective of whether such Book Debts are Protected Book Debts within a Protected Debtor Limit; and
- (b) the Protected Debtor Limit Fee for each Protected Debtor, for whom you apply for a Protected Debtor Limit at any given time, and upon the anniversary of any further Protected Period granted.

Payment of the above fees is a condition precedent of our liability to make payment to you under this Debtor Protection Supplement.

12.9 Loss caused by or resulting from the following are not covered under this Debtor Protection Supplement:

- (a) wrongful or dishonest acts or omissions of you or your agents;
- (b) failure to perform or to fulfil any obligation or agreement made herein by you, or any material inaccuracy regarding any representation made by you;

- (c) disputes between you or us and the Protected Debtor, unless and until each such dispute shall have been finally adjudicated and the Protected Book Debt shall be a valid and legally enforceable indebtedness of the Protected Debtor, its legal representative or successor in interest;
- (d) nuclear reaction or nuclear radiation or radioactive contamination;
- (e) war between the People's Republic of China, France, the UK, the Russian Federation and/or the United States of America;
- (f) any losses which represent retentions made by a Debtor in accordance with the terms of the Supply Contract.

12.10 Notwithstanding any warranties and undertakings given elsewhere in the Agreement, you warrant and agree:

- (a) that the statements contained in the Pre-Approval Form and any attachments thereto and any other documents referred to therein in support of your application for this facility, that hereby become part of the Debtor Protection Supplement, are true and that no material information has been withheld, and that you have no knowledge at inception of any circumstance that may reasonably be expected to result in a Loss.
- (b) not to grant initial Payment Terms longer than the Maximum Payment Terms specified in paragraph 20.6;
- (c) that you will not reschedule, extend, postpone or change any Due Date without our written prior consent,

SAVE THAT, prior to Due Date, if the Protected Debtor is unable to make payment on the original Due Date, you may agree to one extension of the Due Date for a period not to exceed the Maximum Extension Period specified in paragraph 20.7, and the new Due Date shall be known as the extended Due Date.

In order to consider such an extension of the Due Date for a period not exceeding the Maximum Extension Period, you must make a positive assessment of the Protected Debtor's continued creditworthiness and the reasons for such an extension must be noted on the file and such details sent to us.

The Protected Debtor Limit may not be increased to accommodate new goods or services while there are still amounts outstanding for which the Due Date has been extended.

No extension is permitted when the Due Date is evidenced by any of the following: bill of exchange, promissory note, cash against documents terms,

documentary sight draft, documents against payment transaction or wherever payment is to be made through a letter of credit;

- (d) that you will not provide Goods to a Protected Debtor:
 - (i) if we or our Insurers shall so direct; or
 - (ii) after you are aware of any event that may reasonably be expected to result in a Loss; or
 - (iii) whilst Protected Debtor is In Default;
- (e) that you will not disclose to the Protected Debtor or any third party the amount or absence of any Protected Debtor Limit and agree to indemnify us against all claims arising from any breach of this undertaking;
- (f) that the Credit Procedures set out in condition 12.11(h) shall apply to all Book Debts and that you will not vary such Credit Procedures in any material way without our prior written agreement;
- (g) that all sole trader and partnership Protected Debtors have authorised the use of information about them by us and our Insurer.

12.11 The responsibility for proving a Loss and evidencing that all conditions and obligations have been complied with shall at all times rest with you. The following matters in paragraphs (a) to (h) should be noted and fully complied with:

(a) Reporting

- (i) You shall notify us, in writing, within five (5) working days of a Debtor Failure or any circumstance that may reasonably be expected to result in a Loss.
- (ii) You shall comply with the terms of your Debtor Protection Supplement and unless we advise you in writing to the contrary, you shall notify your insurer if you hold your own policy or us monthly, in a format specified by either your insurer or us, of all Book Debts Outstanding from any Protected Debtor that at the end of the previous month were unpaid at the expiry of 60 days from the Due Date and will report each month thereafter all such Book Debts that continue to be unpaid, according to the conditions of the policy.

(b) Application of Funds

For the purpose of this Debtor Protection Supplement, all funds received from the Protected Debtor and from any source whatsoever as or towards payment of the Protected Debtor's obligations to us after the Protected Debtor is in default of any payment obligation to us at the expiry of the Maximum

Extension Period specified in paragraph 20.7, or where a Debtor Failure has occurred, shall be applied in chronological order of Due Dates until payment of a claim, when the allocation of funds procedure set forth below in condition 12.11(f). Recoveries shall apply. This method of funds application shall be used regardless of any designation of funds by the Protected Debtor or any other party unless specifically agreed in writing by us.

(c) Payment of Loss

Your claim will be payable by us within forty five (45) days of receipt of a claim in such form as we may specify following Debtor Failure and subject to:

- (i) receipt of satisfactory confirmation of debt in the case of Debtor Insolvency; and
- (ii) compliance with the terms and conditions of this Debtor Protection Supplement; and
- (iii) acceptance and payment of the claim by our Insurer under our Policy.

(d) Calculation of your claim

We shall pay you the Protected Percentage of a Loss relating to Protected Book Debts (excluding late payment penalties or post maturity interest charges) that remains unpaid by a Protected Debtor at the date of Debtor Failure. The maximum we will pay in settlement of a claim will never be more than the Protected Percentage specified in paragraph 20.8 of the applicable Protected Debtor Limit, as per condition 12.11(e), Limits of liability, below.

The amount of your claim we will pay to you will be reduced by any:

- (i) Prepayment paid to you;
- (ii) sums received by you or on your behalf from any source including but not limited to, insurance, collateral, guarantees, surety's, deposits, rights of title retention, part-payments, or dividends in respect of the Protected Book Debts; and
- (iii) discounts or other similar allowances provided by you to which a Protected Debtor is entitled, expenses or taxes saved due to the failure of your Protected Debtor to pay its Book Debts to us, the invoice value of Goods not Delivered to or not accepted by the Protected Debtor or the invoice value of Goods returned by or recovered from the Protected Debtor before payment of a claim by us;
- (iv) amounts that are the subject of a dispute between you or us and the Protected Debtor, until each such dispute shall have been finally adjudicated and the Protected Book Debt shall be a valid and legally

enforceable indebtedness of the Protected Debtor, its legal representative or successor in interest.

(e) Limits of liability

- (i) No more than one Protected Debtor Limit shall be in effect for any one Protected Debtor regardless of the number of years this Debtor Protection Supplement or any prior, replacement or renewal Debtor Protection Supplement is in force.
- (ii) When more than one limit is issued for a Protected Debtor under a Debtor Protection Supplement, the limit in effect for the Protected Debtor on the relevant shipment date(s) will be the applicable limit for Loss adjustment purposes.

(f) Recoveries

After payment of a Loss, any funds received from the Protected Debtor or from any other source whatsoever as or towards payment of the Protected Debtor's obligations to us, regardless of any designation as to application of funds made by the Protected Debtor or by any entity from whom such payments are received, shall be immediately paid to us and shall be held in trust by you for us until we receive such payment.

(g) Subrogation

- (i) In the event of any payment under this Debtor Protection Supplement, we shall be subrogated to all of your rights of recovery therefore against any person or organisation, and you shall execute and deliver all instruments and papers and do whatever else is necessary to secure such rights.
- (ii) Notwithstanding any prior assignment and the provisions of condition 2 of this Agreement, in the event of any payment under this Debtor Protection Supplement you agree to effect such further legal assignment of the relevant Protected Book Debt as we require and provide notice of such assignment to the Protected Debtor, its legal representative or successor in title. We shall have the right to direct the manner in which such assets shall be liquidated. You shall do nothing to prejudice such rights.
- (iii) We will not pay a Loss under this Debtor Protection Supplement if the rights to which it shall be subrogated are the subject of any lien, security interest or other third party claim superior to that of ours.

(h) Credit Procedures

You shall comply with the following requirements that we may vary by written notice to you from time to time.

Protected Debtor Limits

You shall obtain a limit from the e-bonded system or a written Protected Debtor Limit for each Protected Debtor from whom the maximum amount outstanding at any given time is expected to exceed the Minimum Retention. The Protected Debtor Limit is the Protected Debtor protected exposure limit approved by us for each Protected Debtor for the purposes of this Debtor Protection Supplement.

Credit Control

If your facility provides for you to act as our agent in the collection of Book Debts or if we request you to do so by written notice, you shall ensure that the following minimum credit control procedures and collection procedures are adhered to at all times.

You shall:

- (i) raise and submit invoices in a timely manner and no later than 30 Working Days from Delivery;
- (ii) send a written reminder to any Protected Debtor that is past due in payment of any undisputed Book Debt within forty (40) days of the Due Date;
- (iii) thereafter, send at least one reminder, either by telephone or post, every forty (40) days to any Protected Debtor who is late in making payment of any Book Debt;
- (iv) monitor the payment performance of each Protected Debtor by preparing and reviewing, at least monthly, a statement of account for each Protected Debtor;
- (v) record on file all such actions taken;
- (vi) notify us immediately if any legal action is commenced to recover any outstanding Book Debt; and
- (vii) comply with such further procedures for collection of Book Debts as we may specify from time to time.

12.12 We may at any time, in connection with a Loss or claim, examine or require to be produced copies of any corporate records or books, internal documents and correspondence, letter, or other documentation or records, in whatever form and wherever situated in your possession or control relating to or connected with this

Debtor Protection Supplement or to any transaction between you and a Protected Debtor. You shall, at our request, take any and all reasonable steps to obtain for us any and all of the aforesaid information in the possession of any other person relating to or connected with this Debtor Protection Supplement or any Loss hereunder.

- 12.13 It is a condition precedent to liability that you have absolutely assigned the Protected Book Debt together with any rights associated therewith to us by way of legal or equitable assignment, or where the Protected Book Debt is a Scottish Debt, an assignation, pursuant to which the benefit of all rights of recovery and any similar rights relating to the Protected Book Debt vest in us and are directly enforceable against the Protected Debtor.
- 12.14 You shall notify us immediately in writing if, during the Protected Period, you consolidate or merge with, or sell all or substantially all of your assets to any other person or entity or if another person or entity should acquire ownership directly or indirectly of more than fifty percent (50%) of your voting share capital. Upon receipt of such notice, we may cancel this Debtor Protection Supplement effective with the date of such change in the composition or control of your company.
- 12.15 If you make any statement, report or claim, knowing it to be false or fraudulent, or if you knowingly conceal any material fact, this Debtor Protection Supplement shall become void and all claims made and sums paid hereunder shall be forfeited, and all payments made by us shall be returned with interest thereon by you upon demand.
- 12.16 The cover provided under this Debtor Protection Supplement shall be excess over any other valid bond, insurance or other indemnity. You shall inform us of any bond, insurance or other indemnity in place at the inception of the Debtor Protection Supplement or as they may arise during the Protected Period.
- 12.17 All notices provided for in this Debtor Protection Supplement shall be in writing (including by electronic or by facsimile transmission) and given in accordance with condition 16.
- 12.18 We may terminate this Debtor Protection Supplement without terminating the Agreement in the event of:
- (a) any failure to pay the charges due in condition 12.8; or
 - (b) any breach by you of your warranties and undertakings in condition 12.10; or
 - (c) the occurrence of any event under condition 15.

This Debtor Protection Supplement shall automatically terminate if the Agreement is terminated.

Upon termination of this Debtor Protection Supplement we shall have no further obligation to you in respect of Protected Book Debts, whether in respect of payments

or otherwise and any charges paid by you or accrued due to us shall be retained by, or paid to, us as appropriate.

- 12.19 We shall be released from all liability under the Debtor Protection Supplement one (1) year after the Due Date of the last Protected Book Debt protected hereunder.
- 12.20 This Debtor Protection Supplement does not include within its cover any part of a Protected Book Debt that represents Value Added Tax. Accordingly, the Protected Debtor Limit shall be calculated and claims paid on that basis.
- 12.21 Notwithstanding any other provisions of this Agreement, this Debtor Protection Supplement is not assignable by you.
- 12.22 Should any dispute arise between you and us under this Debtor Protection Supplement, the matter in dispute shall be submitted to the London Court of International Arbitration, London, England under and in accordance with its then prevailing commercial arbitration rules. The arbitration will be held in London, England. The award rendered by the arbitrator(s) shall be final and binding upon the parties and Judgment thereon may be entered in any Court having competent jurisdiction.
- 12.23 No action or arbitration proceedings arising out of this Debtor Protection Supplement may be brought against us unless such action is commenced within twenty-four (24) months following the last day of the Protected Period.

13 ELECTRONIC DATA INTERCHANGE

- 13.1 Where paragraph 19 of the Schedule states that the facility is to be provided, the following provisions of this condition shall be operative and constitute the terms upon which we shall provide EDI.
- 13.2 We shall provide the ability for you to make Notifications and access by you to information shown on any Business Day during normal working hours on your Sales Ledger Control Account and Client Account together with details of the funds available to you by way of Prepayments that at that time have not been paid to you and the amount of the Prepayments already made to you (subject to the Funding Limit and fees and charges as set out in the terms of this Agreement).
- 13.3 If we provide the ability for you to make Notifications to us by EDI you must nevertheless forthwith thereafter submit to us copy invoices and any other documentary evidence of a Book Debt (such as proof of delivery) and/or credit notes as we specify from time to time.
- 13.4 You are solely responsible for all costs and any taxes or duties relating to your sending information to us and receiving it from us including, but not limited to, telephone charges and charges made by any Intermediary.

- 13.5 You will obtain and maintain all equipment, software and communication services requisite for the proper functioning of the EDI and we shall have no responsibility for the reliability or proper functioning of such equipment, software or services or for the performance of any Intermediary.
- 13.6 You undertake:
- (a) to observe complete confidentiality in respect of any information received by you from us by the use of the EDI including information relating to matters other than the operation of the Agreement and that you will at all times comply precisely with all requirements of law and of orders, rules and regulations having the force of law for the time being in force in relation to any data held or received by you at any time;
 - (b) to ensure that only your duly authorised officers or employees have access to any authorisation codes and passwords, and that no unauthorised person has access to the EDI;
 - (c) to ensure that each transmission by you correctly and clearly identifies:
 - (i) the sender and the recipient; and
 - (ii) the approval of the information contained in the transmission by the sender;by the agreed method of identifying their authenticity.
 - (d) to ensure that your use of the EDI will not in any way corrupt our data processing systems or any of the data held by us whether by reason of any virus or otherwise;
 - (e) to comply with all procedures specified by us for the use of the EDI, from time to time.
- 13.7 We shall have no responsibility whatsoever for any failure or delay in your obtaining access to any information from us or in your provision of information to us nor for any default of any Intermediary nor shall we be liable to you for loss costs or expense caused to you by any incorrect information received by either you or us by the use of the EDI except for any error arising solely from our own default.
- 13.8 For the purposes of the use of the EDI, but not otherwise, “writing” means any form of information that is accessible so as to be usable for subsequent reference.
- 13.9 We may at any time in our absolute discretion by written or oral notice to you withdraw your right to use the EDI. Notice to terminate this Agreement shall include notice to terminate the EDI, however, we may terminate the EDI independently if we so choose.
- 13.10 In addition to any other indemnity in this Agreement you hereby undertake to

indemnify us and hold us harmless against all claims losses costs damages expense and interest we may suffer or incur as a result of our having agreed to provide you with access to information on our data processing system and/or your having obtained from us any information by means of electronic data interchange (including, but not limited to, any corruption of our data or systems by or through any Intermediary) and/or any breach by you of any of the provisions of this Agreement.

- 13.11 You hereby undertake that you shall not at any time make any claim or take any proceedings against us (or our successors in title) in respect of any losses costs damages expenses or interest arising from:
- (a) the use of any of the equipment provided by us to you for electronic data transmission or processing; or
 - (b) your reliance on any data transmitted to you (or purportedly to you) by us notwithstanding any absence of or defect in the authority of the person transmitting such data, or by your use of the EDI; or
 - (c) any corruption of data held or to be held in your data processing system for any reason including (but not limited to) the introduction of any virus into that system from any source.

14 DATA PROTECTION

- 14.1 For the purposes of this Agreement, from the date of Commencement until its termination and discharge of all Your Obligations, you shall provide information about your Associates who are individuals and your sole trader and partnership Debtors, and you have confirm that you have the on-going necessary authority to allow us to process this information for the purpose of checks and searches that we require to make about them, including with credit references and fraud prevention agencies, and to allow us to make such further checks and searches against your Associates and sole trader and partnership Debtors as required with the necessary agencies. Furthermore, you acknowledge, and confirm that you have procured the acknowledgment of your Associates and notified your sole trader and partnership Debtors, that such services will include searches as to criminal offences, proceedings and convictions.
- 14.2 You shall despatch a notice in accordance with paragraph 24 of the Schedule.
- 14.3 In addition to any other warranty set out in this Agreement, you warrant and undertake that, in relation to any living individual including:
- (a) a Debtor or a partner, shareholder, director or other officer of a Debtor;
 - (b) a person who has or may give a guarantee or indemnity in respect of the obligations of a Debtor under a Supply Contract;
 - (c) your Associates;

that you have strictly complied and will, until the termination of this Agreement and the discharge of all Your Obligations, strictly comply with, the provisions of Data Protection Legislation including the principles contained in the schedules to that act and, in particular, that you have disclosed and will disclose to any such living individual that you may at any time pass to us Data (as defined in Data Protection Legislation) that you hold in respect of him for the purposes of your carrying out Your Obligations and notified him of the manner and purposes for which we may process personal data, and you shall keep a record of to whom, in what form and when you notified them and produce evidence to this effect to us immediately on request.

15 INSOLVENCY AND DEFAULT

15.1 Each of the following will be a Termination Event, upon or at any time after the occurrence of which we may terminate this Agreement immediately by giving written notice of termination to you:

- (a) you breach or threaten to breach any of the provisions of this Agreement, any other agreement with us or any Associate of ours, or any related guarantee or security;
- (b) any of your representations and warranties are untrue or incorrect in any material respect when they are made or deemed to be repeated under this Agreement;
- (c) any moneys due from you to us are not paid within 5 days after they become due;
- (d) you (or any partner or member of yours if you are an LLP) are or become Insolvent;
- (e) if the nature of your business changes materially;
- (f) if, without our prior written consent, there is a change in the person who Controls you or who owns or is entitled to vote 20% (or more) of your voting rights or is entitled to appoint any of your directors;
- (g) if any of your directors or partners (or any partner or member of yours if you are an LLP) ceases to be a director or is disqualified from acting as a director or partner (or partner or member if you are an LLP) and is not replaced within 3 months by an individual acceptable to us or any shareholder, director or partner (or partner or member if you are an LLP) is convicted of a criminal offence involving dishonesty;
- (h) if any of our payments to you are not used in the ordinary course of your business;
- (i) if any person who has given us a guarantee, warranty or indemnity of your

obligations under this Agreement becomes Insolvent, or dies or terminates or amends (or purports or attempts to terminate or amend) the guarantee, warranty or indemnity, or if required by us to acknowledge any amendment to the terms of this Agreement, fails or refuses to do so;

- (j) any person who waived, gave consent, priority or released in our favour its rights to any Book Debt withdraws such waiver, consent, priority or release or otherwise asserts a claim to any Book Debt, its Related Rights, or any proceeds thereof;
- (k) we consider, in our absolute discretion, that there has been a material adverse change or deterioration in your business, assets, financial condition or operating performance or those of any person who has given us a guarantee, warranty or indemnity in respect of your obligations under this Agreement;
- (l) for a consecutive period of 8 (eight) weeks you fail to deliver any Notifications;
- (m) any Borrowings by you or any Associate of yours that are not paid when due for payment (whether because of acceleration or otherwise) or within any originally permitted period of grace or any creditor of yours or any Associate of yours becomes entitled to declare any such Borrowings due and payable prior to their stated maturity;
- (n) your repayment obligations, or those of any person who has given us a guarantee, warranty or indemnity in respect of your obligations under this Agreement, to a third party being declared due prior to its stated maturity date or if you or, as the case may be, the guarantor, does not pay it when due;
- (o) the commission by you of an offence of money laundering or any transaction giving us grounds to suspect that you are, or may be, engaged in money laundering;
- (p) any procedure being used against you to arrest, attach or take possession of any of your assets; and
- (q) any circumstances arise which, in our reasonable opinion, make it unlawful in any jurisdiction for you or us to perform our respective obligations under this Agreement.

15.2 Consequences Of Termination

- (a) Save as expressly provided in this Agreement to the contrary, termination of this Agreement will not affect the rights or obligations of either you or us in relation to Book Debts assigned to or held on trust for us prior to such termination, nor affect the continued accrual of Service Charges, Debtor Protection Fees, Discount Charges or other fees and expense payable under this Agreement in relation to such Book Debts.

- (b) On the expiry of the period of notice to terminate this Agreement given under clause 5.1, or (if we so elect) at any time after a Termination Event has occurred and/or is continuing (whether we have chosen to exercise our right to terminate this Agreement or not), or upon our termination of this Agreement pursuant to this condition 15, the following will apply:
- (i) all Outstanding Approved Book Debts will automatically become Disapproved and we will not be obliged to make any payments to you (on any account whatsoever) until we are satisfied that we have received an amount equal to all Your Obligations or until the Client Account is in credit and then only in respect of the amount of such credit balance less any anticipated, estimated or other costs, fees, charges or deductions;
 - (ii) you will pay to us immediately upon our demand any debit balance owing to us on the Client Account;
 - (iii) subject to condition 10.4 you will upon our demand repurchase from us all Outstanding Book Debts at the Repurchase Price. Upon unconditional receipt of such sum from you in cleared funds the ownership of each such Book Debt (and its Related Rights) will be reassigned to you and we will have no further obligations or liabilities in respect of such Book Debt, and for the avoidance of doubt you shall not derive title or interest in any of the Outstanding Book Debts unless or until we have been repaid in full. Where any such Book Debt is a Scottish Debt, the terms of condition 10.6 shall apply;
 - (iv) the Discount Charge will automatically increase by an additional 5% per annum over the base lending rate for the time being of Our Bankers or the minimum base rate, if higher, specified in paragraph 8;
 - (v) we shall be entitled to increase the Service Charge to 10% of all Book Debts (both in respect of all Outstanding Book Debts at that time and all Book Debts subsequently Notified to us);
 - (vi) we shall require that no credit note is issued without our prior written consent. You shall advise us if you wish to issue a credit note and forward to us the original credit note with all supporting documentation we may require explaining clearly why such credit note should be issued. If we agree we shall despatch the credit note to the Debtor (at your expense).

15.3 If we require you to repurchase any Book Debts and you fail to do so within 2 Working Days of such demand, we will be entitled to charge you an additional collection fee at the rate of 10% of amounts collected by us thereafter. This collection fee is in addition to any other fee payable by you to us under this Agreement. You expressly acknowledge that such fee constitutes a fair and reasonable pre-estimate of our likely

costs and expenses in providing such service to you.

15.4 if we decide not to terminate this Agreement following the occurrence of a Termination Event, we may modify the Agreement as we deem necessary and notify you of any modifications which we make. You hereby consent to such amendments and waive your right to object to the same.

15.5 Should we decide to terminate this Agreement following a Termination Event or, in our absolute discretion, agree to terminate the Agreement sooner than is permitted under the Agreement then you shall pay to us a fee calculated as follows:

- (a) a sum not less than the higher of:-
 - (i) the monthly average of the Service Charge (including any Refactoring Charge) payable by you in the six calendar month period immediately preceding the service of your notice (or if this Agreement has not run for such period, the monthly average in the calendar months for which this Agreement has run), and
 - (ii) one twelfth of the Minimum Annual Service Charge (if any) payable by you in accordance with the terms of this Agreement;

in each case multiplied by the number of months (in whole or in part) between the intended or actual date of early termination and the date which this Agreement could have been terminated by you but for our decision to terminate it following a Termination Event or our consent to termination at your request;

- (b) plus, in either case,
 - (i) the monthly average of the Discount Charge (less the relevant monthly average of the base lending rate or such other rate as shall be agreed between the parties in writing) payable by you in the six month period immediately preceding the service of your notice (or if this Agreement has not run for such period, the monthly average in the calendar months for which this Agreement has run), multiplied by the number of months (in whole or in part) between the intended or actual date of early termination and the date which this Agreement could have been terminated by you but for our decision to terminate it following a Termination Event or our consent to termination at your request,
- (c) or, such other sum as we may, in our absolute discretion, otherwise agree with you.
- (d) The amount payable by you under this condition must be paid to us before termination shall be effective.

- (e) You expressly agree that such fee constitutes a fair and reasonable pre-estimate of our likely loss of costs and expenses that we would otherwise have received for the provision of our services but for the provision of our consent or termination as a result of a Termination Event.

15.6 We will be entitled to recover from you (and you irrevocably agree to indemnify us in respect of) of all costs (including our own administrative and other costs), charges, expenses, professional fees (including VAT), losses, claims and/or demands that we may suffer or incur in securing, protecting and/or exercising our rights under this Agreement in the event that this Agreement is terminated. Our certificate of the amount of such costs, charges, expenses, professional fees, losses, claims and demands will be conclusive and binding upon you unless it contains a manifest error.

16 NOTICES

16.1 Any written notice or demand required or permitted to be given or made by us to or on you will be validly served or made:

- (a) if you are a company, if handed to any of your officers or, if you are an LLP, to any of your members or, if you are a partnership (other than an LLP), to any partner or, if you are a sole trader, to you; or
- (b) if delivered or sent by first or second class prepaid post to your address stated in paragraph 1 of the Schedule or to any address at which you carry on business or, if you are a company or an LLP, to your registered office; or
- (c) if transmitted by facsimile or e-mail to any facsimile number or e-mail address of yours made known to us by you at any time; or
- (d) made available for viewing by EDI at the time at which it was made available to be viewed by you.

16.2 Any such notice or demand, if served personally, will take effect upon its service and, if sent by post, will take effect at 10.00am on the second (first class post) or third (second class post) Working Day after the day of its posting and, if transmitted by facsimile or e-mail, will take effect upon its transmission (unless the time of transmission is outside of normal business hours in which case it will be deemed received at 10.00am on the next following Working Day) and, if made available for viewing by EDI, at the time at which it was made available to be viewed by you.

16.3 Any notice required or permitted to be given by you to us will be validly given if sent to us at our registered office, or such other address as we may notify you for this purpose, by prepaid first class post and will be effective upon its receipt by us.

17 TRANSFERS

17.1 You hereby agree that we may at any time novate, assign, transfer, charge or otherwise

dispose of any of our rights and/or obligations under this Agreement and/or under any related guarantee, warranty, indemnity or security. You will enter into any documentation that we may require in order to give effect to any such novation, assignment, transfer, charge or other disposition. You also agree that we may execute any such documentation as your attorney pursuant to clause 6.

- 17.2 You may not, without our prior written consent, assign, transfer or hold upon trust any of your rights and/or obligations under this Agreement or any related security.

18 VARIATIONS AND WAIVERS

- 18.1 We may vary this Agreement in the manner stated in condition 15.4.

- 18.2 We may also vary this Agreement by giving you written notice of a proposed variation. You will be asked to acknowledge such a variation, however if we do not receive your acknowledgement of such a variation within 7 days, you will be deemed to have accepted such variation. Any Notification of Debts to us by you after we have sent you notice of a proposed variation will also be deemed to constitute your acceptance of such variation, whether such Notification occurs within or after 7 days from the date we sent you notice of the proposed variation.

- 18.3 Our rights under this Agreement will not be affected in any way by our granting you time or indulgence, and no waiver by us of any requirement of this Agreement will constitute a waiver of that requirement in the future or of any other requirement. No failure or delay on our part in the exercise of any of our rights under this Agreement will constitute a waiver of that right. No failure or delay, granting of time or indulgence by us to you shall be construed in any way as a representation of our acceptance, waiver of or otherwise acquiescence in or to any action or inaction, constituting a breach by you of any term of this Agreement.

19 GENERAL PROVISIONS

19.1 Constitution and Plurality

- (a) If you are more than one person you agree that:
- (i) references to “you” or “your” include references to any one or more of you or to events relating to any one or more of you;
 - (ii) all undertakings and warranties given by you in this Agreement and the acknowledgements, appointment and authorities given and made by you in this Agreement shall be deemed to have been given, incurred and made by every one of you;
 - (iii) all Your Obligations shall be joint and several and we may release or compromise with any one or more of you without affecting our rights against the others; and

- (iv) we may (but shall not be obliged to) treat any notice to or demand on any one or more of you as notice to or demand on you all and any notice to us by any of you as notice by you all.
- (b) If you are a partnership (other than an LLP) all the persons who have signed the Agreement warrant that all the present persons comprising your partnership are named in this Agreement and you undertake to procure that any partner admitted by you will execute such documents as we may require to bind him to the terms of this Agreement.
- (c) if you are an partnership (but not an LLP) and you notify us, any retiring partner will be released from liability to us in respect of Your Obligations to us after we receive notice of his retirement or, if later, the date of his retirement. A retiring partner will remain liable to us in respect of Your Obligations before his retirement or before we receive notice of his retirement (whichever is later);
- (d) Except as provided in condition 15, this Agreement including all its terms will remain in full force and effect in spite of any change in your constitution. You must notify us of any such change in your constitution, and you must obtain our written consent before incorporating your business;
- (e) If you are a partnership (but not an LLP) or a sole trader:
 - (i) You will take all necessary steps to ensure registration of this Agreement at the Bills of Sale Registry. To do this you shall, at your cost, attend before a practising solicitor, instructed to explain the nature and effect of this Agreement to you before signing this Agreement in their presence. The same solicitor will be required to witness your execution of this Agreement and provide an affidavit to that effect;
 - (ii) you signify by your signature of this Agreement your concurrence with our opinion that section 10 (3) (b) (iii) of the Consumer Credit Act 1974 does not apply to this Agreement;
 - (iii) you warrant that the residential addresses of those executing this Agreement are correctly recorded in the Schedule and you will forthwith, in writing, advise us of any changes thereto;
 - (iv) if you change your domicile to a jurisdiction outside England and Wales or Scotland you shall forthwith, in writing, advise us accordingly and execute such further documents as we may require;
 - (v) if any of the persons executing this Agreement have or acquires an interest in any other business they shall advise us forthwith, in writing, and shall procure that such business will enter into separate agreements with us in like form, should we so require;

- 19.2 If any act or event would be required to be performed or be due to take place according to this Agreement on or within a period ending on a day that is not a Working Day the act or event will be deemed to be performed or to take place on or by the next Working Day.
- 19.3 If any provision of this Agreement is held to be invalid or unenforceable no other provision will be affected and all such other provisions will remain in full force and effect.
- 19.4 We shall be entitled to rely upon any act done or any letter or document signed or any communication sent to us by facsimile or by e-mail by any person purporting to act or sign or send on your behalf despite any defect in or absence of any authority of such person.
- 19.5 You will at our request execute and deliver to us any charges, mortgages or other security interests or documents that we may require at any time and from time to time as security for all your obligations and liabilities to us under this Agreement.
- 19.6 Our rights under this Agreement will not be affected in any way by any grant by us of any time or indulgence to you or any other person nor by any delay or failure in our exercise of any option under this Agreement or otherwise.
- 19.7 This Agreement will be construed and take effect in accordance with English law and you hereby submit to the jurisdiction of the English courts without prejudice to our right to bring proceedings in the courts of any country in which you carry on business.
- 19.8 Except as specifically provided for in this Agreement termination of this Agreement (including termination in accordance with condition 15) will not affect the rights and obligations of either of us in relation to any transaction having its inception before the date of termination or any Book Debt in existence on that date and such rights and obligations will remain in full force and effect until duly extinguished. All licences and authorities given to us by you in this Agreement are irrevocable and will continue after the termination of this Agreement until all Your Obligations have been fully discharged.
- 19.9 No person other than you or us (which shall include our successors in title and assigns) will have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. This condition does not affect any rights or remedy of any person that exists or is available otherwise than under that Act.
- 19.10 This Agreement may be executed in any number of documents or counterparts each in the like form, all of which when taken together shall constitute one and the same document.

20 MEANINGS OF WORDS AND EXPRESSIONS

- 20.1 In this Agreement:

- (a) where the context allows the singular includes the plural and vice versa and any of the three genders includes either of the other two;
- (b) where we have a right or option to do anything then the right or option is at our absolute discretion;
- (c) a "person" is a reference to any individual person, firm, partnership or body corporate;
- (d) references to "your" in this Agreement means belonging to you;
- (e) the expressions "**including**", "**includes**" and "**in particular**" do not limit or restrict any general words preceding any of them;
- (f) any undertaking by you to do something includes an undertaking by you to procure that it is to be done and any undertaking by you not to do something includes an undertaking by you not to permit it to be done;
- (g) where the meaning of any expression in or in relation to any place outside England and Wales is used and there is no exact equivalent to that expression in that place then the expression is to have the meaning of its closest equivalent in that place;
- (h) the meanings of general words introduced by the word "**other**" or "**otherwise**" are not limited by reference to any preceding word indicating a particular class of acts matters or things;
- (i) the headings of clauses, conditions and paragraphs are for convenience only and do not affect or limit the meaning or extent of any clause, condition or paragraph;
- (j) reference to any Act of Parliament includes such Act as amended or re-enacted from time to time and any order or regulation made under it;
- (k) except where otherwise specified time limits described in days are in calendar days;
- (l) certain of the terms defined below may appear on statements and/or certain computer interface with different references. Where this arises we shall notify you from time to time of any alteration or adjustment in use or the meanings of these terms by notice. We set out a Glossary of those terms currently in use below.
- (m) the following words and expressions have the meanings attributed to them below:

"the Act" means the Insolvency Act 1986;

"Approved" means in relation to any Notified Book Debt, Approved for Prepayment;

"assignment" in relation to a Scottish Debt or its Related Rights means "assignment" as that word is understood in Scots law and similarly references to "re-assignment" shall include "re-assignment" in relation to a Scottish Receivable or its Related Rights;

"Associate" means any person whose relationship with you or us (as the case may be) is within the meaning of "associate" in section 435 of the Act or any of your or our (as the case may be) directors or other officers or members or the spouse of any such person, director, officer or member;

"BACS" means Bankers' Automated Clearing Service;

"Book Debt" means the amount (or, where the context allows, a part of such amount) of any obligation or indebtedness, including any tax or duty payable, incurred by a Debtor under a Supply Contract together with (where the context allows) any Related Rights pertaining to such obligation or indebtedness;

"Borrowings" means

- (i) money borrowed or raised (including capitalised interest thereon);
- (ii) any liability under any bond, note, debenture, loan stock or other instrument;
- (iii) any liability under any debt purchase, factoring or similar arrangement;
- (iv) amounts owing under finance leases, hire purchase agreements or conditional sale agreements; and
- (v) liabilities under guarantees and indemnities;

"CHAPS" means Clearing House Automated Payments System;

"Client Account" means the account or accounts maintained by us in your name for the recording of all transactions between you and us except for such transactions that are to be recorded on the Sales Ledger Control Account;

"Collection Date" means in respect of any Book Debt paid in cash or by credit transfer the date of the advice to us of the receipt of the funds in our bank account and, in respect of any Book Debt paid by cheque or other instrument, the date when the funds represented by it are collected and received by Our Bankers;

"Commencement" means the date specified in paragraph 3;

"Concentration Limit" means the value calculated by applying the Concentration Percentage to the value of all Approved Book Debts owed by any single Debtor at any time;

"Concentration Percentage" means the percentage, if any, specified in paragraph 16 (or such other percentage as we may notify you from time to time);

"Cost of Funds" means such rate of exchange as Our Bankers may offer us at the applicable time;

"Credit Limit" means the limit determined by us in our absolute discretion, in relation to any Debtor, for the purpose of determining which Book Debts owing by that Debtor may be Approved;

"Currency Invoice" means an invoice expressed in a currency other than sterling;

"Data Protection Legislation" means (a) the Data Protection Act 2018, Regulation (EU) 2016/679 of the European Parliament and the Council of 27 April 2016, otherwise known as the General Data Protection Regulation ("GDPR") and any other applicable law concerning data protection, privacy or confidentiality and any subordinate or related legislation; (b) any guidance, codes of practice or instruction issued by the UK Information Commissioner's Office (or any other relevant supervisory authority) from time to time; and (c) any replacement to, or amendment of, any of the foregoing; and (d) any other laws concerning data protection, confidentiality or privacy which may come into force from time to time;

"Debtor" means any person who has incurred or may incur an obligation to you under a Supply Contract;

"Debtor Failure" occurs when:

- (i) a Debtor becomes Insolvent; or
- (ii) a Debtor fails to pay a Protected Book Debt that is contractually owing to you within the Protracted Default Period specified in paragraph 20.11;

"Debtor Insolvency" occurs when:

- (i) a Debtor commences or becomes the subject of any uncontested proceedings or filings under the applicable bankruptcy or insolvency legislation, or a Court or other person having competent jurisdiction appoints a receiver, trustee, liquidator, provisional liquidator, judicial factor or similar officer in respect of a Debtor or any of its assets; or

- (ii) a composition by the Debtor has been approved by a Court having jurisdiction or a compromise or arrangement has been made binding by the Court on the Debtor and all or substantially all of the Debtor's trade creditors or the Debtor enters into a trust deed for creditors; or
- (iii) circumstances exist in relation to a Debtor that which in our sole opinion are equivalent to one of the above;

"Debtor Protection Fee" means the fee set out in paragraph 20.10;

"Debtor Protection Supplement" means the facility provided under condition 12 where so stated under paragraph 20;

"Delivered" means in the case of any goods or any invoice, delivered to, or to the order of, any Debtor and, in the case of services or hiring, means performed in full; and **"Delivery"** shall be construed accordingly;

"Disapproved" means in relation to any Book Debt, not Approved;

"Discount Charge" means the charge referred to in condition 5.3, calculated daily by applying the rate per annum specified in paragraph 8(a) (or such other sum as we may agree with you in writing), and subject to the minimum specified in paragraph 8(b), to the balance standing to the debit of the Client Account (and any accrued Discount Charges or other charges accrued but not yet applied to the Client Account) as at the close of business each day;

"Due Date" means the date payment is required to be made by the Debtor under the Supply Contract;

"EDI" means the availability for you to communicate and share your data set with us by electronic means for the purposes described in condition 13, if paragraph 19 says that you should use such services or we otherwise agree in writing that you should.

"Export Concentration Percentage" means the percentage, if any, specified in paragraph 18 (or such other percentage as we may notify you from time to time);

"Export Debt" means any Book Debt due from a Debtor which in the case of a limited company or limited partnership is not incorporated under the laws of the UK, registered as a foreign company in the UK, or have its principal place of business in the UK, or in the case of an individual, is domiciled outside the UK.

"Export Limit" means a separate Funding Limit in respect of Export Debts;

"FPS" means the Faster Payment Service promulgated by the Payment Services Regulations 2009;

"Funding Limit" means the lesser of (i) the limit set out in paragraph 14 (or such other limit as we may notify to you in writing from time to time) or (ii) an amount equivalent to the Prepayment Percentage multiplied by the total amount of Outstanding Approved Book Debts;

"Glossary" means the glossary of terms set out in condition 20.1 (m) or as otherwise notified to you from time to time in accordance with condition 20.1(l);

"Goods" means any goods or services (with or without materials supplied) or hiring the subject of a Supply Contract;

"Impaired" means in relation to a Book Debt, that the Debtor is Insolvent or In Default;

"In Default" means in relation to a Debtor, past due in any payment obligations to you by more than the Maximum Extension Period, unless the total aggregate amount of such past due payment obligations does not exceed ten percent (10%) of the Protected Debtor Limit (Payment obligations that are disputed by the Debtor in writing will not be considered past due for the purposes of this definition unless the total amount disputed exceeds ten percent (10%) of the Protected Debtor Limit);

"Initial Period" means the period specified in paragraph 4;

"Insolvency Act" means the Insolvency Act 1986 and the schedules thereto and any re-enactment or amendment thereof or of any part thereof;

"Insolvent" and **"Insolvency"** in relation to a person or corporate means any of the following:

- (i) the person is unable to pay his or its debts within the meaning of section 123 of the Insolvency Act;
- (ii) a statutory demand is served on the person and the statutory demand is not set aside within 21 days;
- (iii) the person applies for an interim order under section 253 of the Insolvency Act or an arrangement or a composition is made for the benefit of creditors (or a class of creditors) whether or not pursuant to the Insolvency Act or the person enters into a trust deed for creditors;
- (iv) a bankruptcy order is made in relation to a partner (or, in the case of an LLP, a partner or member) or a partner (or, in the case of an LLP, a partner or member) applies for an interim order under section 253 of the Insolvency Act or an arrangement or a composition is made for the benefit of creditors (or a class of creditors) whether or not pursuant to

the Insolvency Act;

- (v) a petition is presented, or other Insolvency Proceedings are commenced, or a meeting is called to pass a resolution, for winding up or for a corporate voluntary arrangement or similar procedure;
- (vi) a receiver or administrative receiver, or administrator, provisional liquidator, monitor, judicial factor, trustee or similar official is appointed;
- (vii) the person's assets are seized or distrained or executed against or become the subject of any diligence;
- (viii) the person ceases or threatens to cease to carry on business or suspends payment of his or its debts;
- (ix) a judgment, decree or other money order is obtained which is not satisfied within 7 days;
- (x) any other indebtedness due, owing or incurred by the person is not paid when it becomes due, or becomes capable of being declared due and payable prior to its stated maturity for any reason;

"Insolvency Proceedings"

- (i) the issue of a petition for winding up or bankruptcy or sequestration; or
- (ii) an administration application under paragraph 12 of schedule B1 to the Act or the appointment of an administrator under paragraph 14 or paragraph 20 of the said Schedule B1; or
- (iii) a proposal for a voluntary arrangement under the Act; or
- (iv) the calling of any meeting of creditors; or
- (v) the appointment of a receiver in respect of any part or the whole of the undertaking or property of any firm, LLP or company;

"Intermediary" means any internet server, internet service provider, telephone service provider or other concern through which you communicate with us by electronic means;

"LLP" means a limited liability partnership incorporated under the Limited Liability Partnerships Act 2000 as amended from time to time;

"Loss" means the amount of the Protected Book Debt unpaid by the Debtor due to Debtor Failure or Protracted Default and established as a valid and legally sustainable obligation of the Debtor to you or us, excluding any post maturity

interest accrued on balances unpaid after the relevant Due Date,

Less:

- (i) contractual discounts, rebates or other similar allowances;
- (ii) any amount that prior to the time of payment of the Purchase Price you or we have received from any source as or towards payment for the Protected Book Debt including the Related Rights;
- (iii) any amount that the Debtor is entitled to deduct by way of credit, set-off or counterclaim;
- (iv) any sales, value-added, or other similar taxes saved due to non-payment of the Protected Book Debt;
- (v) the value of any Goods not accepted by the Debtor;
- (vi) any invoice, application for payment or other debt instrument or part thereof that represents retentions made by the Debtor in accordance with the terms of the Supply Contract.

Where the Protected Book Debt is expressed in any currency other than Sterling, the rate of exchange shall be the rate as offered by our Insurer's London Clearing Bank on the Due Date;

"Maximum Extension Period" means the period specified in paragraph 20.7;

"Maximum Payment Terms" means the payment terms specified in paragraph 20.6;

"Minimum Annual Service Charge" means the minimum annual charge set out in paragraph 10;

"Minimum Retention" means the minimum amount of Loss that you shall retain for your own account being the greater of either i) the amount specified in paragraph 20.5 or ii) the Unprotected Percentage;

"Non-Compliant Debt" means a Book Debt in respect of which you are unable to give us every warranty and undertaking included in the conditions;

"Notification" means a form prepared by you and delivered to us in accordance with condition 1; and **"Notify"** and **"Notified"** in relation to a Book Debt will mean respectively include and included in a Notification;

"Our Bankers" means The Royal Bank of Scotland plc or such other bank as we may nominate from time to time;

"Outstanding" means in relation to any Book Debt, included in a Notification but that the relevant Debtor has not discharged in full the obligations in respect of such Book Debt;

"Overpayment Fee" means such charge and for such period as you and we agree, or in default thereof 10% of the amount by which the debit balance of the Client Account exceeds the Funding Limit from time to time. Such fee shall be charged on each occurrence or if continuing per month or any part thereof;

"Payment Terms" means your normal terms off credit to Debtors as recorded in paragraph 1.5;

"Pre-Approval Form" means the statement from you in the format we may specify providing details of your trading in reliance upon which we have agreed to provide the Debtor Protection Supplement;

"Prepayment" means a payment by us to you on account of the Purchase Price of any Book Debt before its Collection Date;

"Prepayment Percentage" means the percentage set out in paragraph 6 (or otherwise notified by us to you from time to time);

"Protected Book Debt" means any Book Debt coming into existence during the Protected Period provided that the Book Debt:

- (i) represents a valid and legally enforceable payment obligation of a Protected Debtor for Goods:
 - (A) Delivered by you during the Protected Period specified in paragraph 20.3 and invoiced within thirty (30) Working Days from the date of such Delivery; and
 - (B) sold on Payment Terms that are not more advantageous to the Debtor than the Maximum Payment Terms; and
 - (C) Delivered in accordance with the relevant Supply Contract; and
 - (D) invoiced within thirty (30) Working Days from date of Delivery and is evidenced by a debt instrument or open account documents (written purchase order, invoice, and shipping documents); and
- (ii) is within the Protected Debtor Limit;
- (iii) is a valid and legally enforceable indebtedness of the Debtor; and
- (iv) is not Impaired at the time of Delivery of the Goods.

"Protected Debtor" means a Debtor that is

- (i) a duly organised and legally existing corporation, proprietorship, partnership or government entity; and
- (ii) an entity for which you hold a Protected Debtor Limit, with the following exceptions that are excluded from coverage:
 - (A) all corporations and other entities controlling, controlled by or under common control with you;
 - (B) any Debtor that, at the time you apply for or we set a Protected Debtor Limit, is:
 - (I) Insolvent; or
 - (II) In Default; or
 - (III) any Debtor for whom you have, at the time you apply for or we set a Protected Debtor Limit, rescheduled or extended the Due Date of any amounts owing for more than the Maximum Extension Period unless the total aggregate amount of such amounts owing past the Maximum Extension Period does not exceed 10% of the Protected Debtor Limit or £10,000, whichever is the lesser, or coverage for such Debtor is specifically approved by us; or
 - (IV) any Debtor for whom we have given a nil Protected Debtor Limit or any lesser amount than applied for in the application for a Protected Debtor Limit; or
 - (V) the Debtor is a government entity of the UK.

"Protected Debtor Limit" means the limit notified to you by us from time to time for each Debtor in respect of which you have paid a Protected Debtor Limit Fee and made an application for such a limit in accordance with the procedures specified by us from time to time. For the avoidance of doubt the Protected Debtor Limit may be nil;

"Protected Debtor Limit Fee" means the fee set out at paragraph 20.4 or as otherwise notified by us to you from time to time;

"Protracted Default" means the failure of a Debtor to pay a Protected Book Debt within the Protected Default Period;

"Protected Percentage" means the percentage of a Protected Book Debt set out in paragraph 20.8, provided that when the percentage set out in

paragraph 20.8 multiplied by the relevant Book Debt is less than the Minimum Retention, the Protected Percentage shall be the percentage of the relevant Book Debt which when multiplied by the relevant Book Debt is equal to the value of the relevant Book Debt less the Minimum Retention;

"Protected Period" means the period of time during which the Debtor Protection Supplement will run and as specified in paragraph 20.3. Any references in this Agreement to any events or matters occurring during the Protected Period shall be construed as referring to the relevant Protected Period where more than one is granted under condition 12.3;

"Protracted Default Period" means the period specified in paragraph 20.11 or otherwise notified to you by us in writing from time to time;

"Purchase Price" means the price payable by us for a Book Debt determined in accordance with condition 4.3;

"Recourse" means our right to require that you repurchase or take a reassignment of, forthwith upon request any Outstanding Notified Book Debt at the Repurchase Price;

"Recourse Period " means in relation to any Book Debt, a period of the length specified in paragraph 11 starting, as we shall advise you, on either the date of the invoice for that Book Debt or the last day of the month in which the invoice for that Book Debt is issued;

"Recourse Debt" means any Book Debt in respect of which we have exercised our right of Recourse;

"Refactoring Charge" means the charge set out in paragraph 12 of the Schedule, or such other percentage as we may agree from time to time;

"Refactoring Charge Period" means the period specified as such in paragraph 13 of the Schedule, beyond which we shall become entitled to charge a Refactoring Charge in respect of any Outstanding Book Debt;

"Related Rights" means all rights ancillary to and relating to any Book Debt including all of the following:

- (i) all your rights under the Supply Contract including to any Good title to which has not passed for any reason to the Debtor;
- (ii) the benefit of all guarantees warranties indemnities insurances and securities given to or held by you;
- (iii) all cheques bills of exchange and other instruments held by or available to you;

- (iv) the right to possession of all ledgers computer data records and documents on or by which any Book Debt is recorded or evidenced;
- (v) any Goods the subject of a Supply Contract returned or rejected by the Debtor or repossessed by you;
- (vi) all rights of reservation of title lien recovery of possession and other remedies given by law to an unpaid vendor of goods;
- (vii) all your rights under contracts of supply between you and your suppliers in relation to goods supplied or to be supplied by you in fulfilment of your delivery obligations to a Debtor whose Book Debt has been assigned to or Notified to us by you under this Agreement, whether or not such goods have been appropriated to the Debtor's Supply Contract; and
- (viii) any interest to which you become entitled in relation to the Book Debt as a result of any statutory enactment or any rule or regulation of government;

"Repurchase Price" means, in relation to a Recourse Debt, the Notified value of that Book Debt or (as the case may be) such part of it as remains Outstanding at that time or such other sum as we may determine but not exceeding the Notified value of such Book Debt;

"Sales Ledger Control Account" means the account or accounts maintained by us in your name for the purpose of recording the Notified value of Book Debts and any adjustment thereto by reason of the issue of credit notes or otherwise;

"Schedule" means the schedule to the Agreement;

"Scottish Debts" means any Book Debt arising (or to arise) under a Supply Contract governed by the law of Scotland or the invoice for which is addressed to a Debtor in Scotland;

"Service Charge" means the charge specified in paragraph 9, at the percentage rate specified therein accruing on each Book Debt Notified to us or, if not a percentage, the amount therein recorded, or such other amount as may be agreed in writing between us, and subject in any case to the Minimum Annual Service Charge;

"Set-Up Fee" means the fee, if any, payable by you at the date of Commencement for our arranging this facility;

"Shortfall" means the amount by which the Service Charge in respect of Book Debts Notified in any calendar month is less than the one twelfth of the Minimum Annual Service Charge;

"Supply Contract" means any contract between you and any Debtor of yours for the sale or hiring of goods or provision of services, with or without materials supplied, or work done by you;

"Survey Fee" means the fee, if any, payable by you at the date of Commencement for our initial audit of your books and records;

"Termination Event" means any of the events listed in condition 15;

"UK" means England, Scotland, Wales, Northern Ireland, the Isle of Man and the Channel Islands;

"Unprotected Percentage" means the percentage of each Loss that you must retain for your own account set out in paragraph 21 (or as otherwise specified by us in writing from time to time) or the Minimum Retention, whichever is the greater;

"Working Day" means any day except any Saturday, Sunday or public holiday on which Our Bankers are open for usual business;

"Writing" means any form of communication that is accessible so that it may be recorded in a permanent form and used at any time after it has been made and **"written"** is to be construed accordingly; and

"Your Obligations" means all your present and future monetary and other actual, contingent or prospective obligations incurred at any time to us whether arising under this Agreement or any other agreement between you and us or otherwise and whether arising in or by contract tort delict restitution assignation or assignment.