

1950497

DATED 1st December, 2000

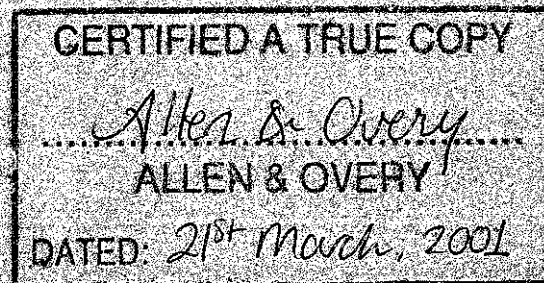
THE SELLERS

AND

NDS GROUP PLC

AGREEMENT

**for the sale and purchase of
all the issued share capital
of Orbis Technology Limited**



ALLEN & OVERY

London



ED2
COMPANIES HOUSE

EACABZH1

0042
03/04/01

CONTENTS

Clause	Page
1. Interpretation	1
2. Sale and purchase of the Shares	1
3. Completion	2
4. Base Consideration	2
5. Earn-out Consideration.....	4
6. Contingent Consideration	6
7. Consideration Shares	6
8. Lock-up of Restricted Shares	10
9. Loan notes in lieu of NDS Shares	11
10. Loans	12
11. Warranties.....	12
12. Set-off.....	13
13. Protective covenants	15
14. Confidentiality	16
15. Independent Accountants	17
16. Notices	17
17. Further assurances	18
18. Assignments	18
19. Sellers' entitlements and responsibility	19
20. Guarantee by K. Emamy.....	21
21. General	21
22. Whole agreement.....	23
23. Governing law	23

Schedule

1. The Sellers	24
2. The Company	25
3. OBSL.....	26
4. Warranties.....	27
5. Limits On Warranty Claims	60
6. Completion	64
7. Completion Accounts	66
8. Profit and Loss Accounts.....	71
9. Earn-out Period.....	76
10. Contingent Consideration	78
11. Interpretation	81

Appendices

- A. Revenue recognition policy for development projects with or without associated product sale (Completion Accounts)
- B. Revenue recognition policy for time and materials work (Completion Accounts)
- C. Revenue recognition policy for development projects with or without associated product Sale (Earn-out)
- D. Revenue recognition policy for time and materials work (Earn-out)

THIS AGREEMENT is made on 1st December, 2000 **BETWEEN:**

- (1) **THE PERSONS** whose names and addresses are set out in column (A) of the schedule headed "The Sellers" (each a "Seller" and together the "Sellers"); and
- (2) **NDS GROUP PLC** (registered number 1950497) whose registered office is at One London Road, Staines, Middlesex TW18 4EX (the "Purchaser").

BACKGROUND:

- (A) The Sellers are together beneficially entitled to or otherwise entitled to sell share capital of Orbis Technology Limited (the "Company").
- (B) The Sellers wish to sell and the Purchaser wishes to purchase all the issued share capital of the Company on the terms set out in this agreement.

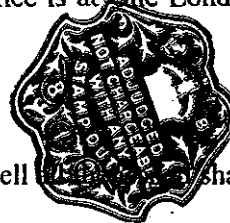
IT IS AGREED as follows:

1. INTERPRETATION

- (1) In addition to terms defined elsewhere in this agreement, the definitions and other provisions in the schedule headed "Interpretation" apply throughout this agreement, unless the contrary intention appears.
- (2) In this agreement, unless the contrary intention appears, a reference to a clause, subclause, schedule or appendix is a reference to a clause, subclause, schedule or appendix of this agreement. The schedules and appendices A and B form part of this agreement.
- (3) The headings in this agreement do not affect its interpretation.

2. SALE AND PURCHASE OF THE SHARES

- (1) Each of the Sellers shall sell and the Purchaser shall purchase those of the Shares set opposite his name in the schedule headed "The Sellers".
- (2) The Shares shall be sold free from all Encumbrances and together with all rights attaching to them.
- (3) The consideration for the sale of the Shares (subject to adjustment as provided in this agreement) shall be:
 - (a) the Base Consideration;
 - (b) the Earn-out Consideration; and
 - (c) (if applicable) the Contingent Consideration,all as more particularly set out in this agreement.
- (4) The Sellers acknowledge that the Purchaser enters into this agreement in reliance on the warranties and undertakings on the part of the Sellers set out in this agreement and the Tax Deed.



- (5) Each Seller (other than the EBT Trustee and the KE Trustees) covenants with the Purchaser that he has the right to sell and transfer to the Purchaser the full legal and beneficial interest in those Shares to be sold by him on the terms set out in this agreement. Each of the EBT Trustee and the KE Trustees covenants with the Purchaser that it or they has or have the right to sell and transfer to the Purchaser the full legal interest in those Shares to be sold by the EBT Trustee and the KE Trustees, respectively, on the terms set out in this agreement, free of any Encumbrance.
- (6) Each Seller waives (and shall procure the waiver by his nominee(s) of) all rights of pre-emption which he (or such nominee(s)) may have (whether under the Company's articles of association or otherwise) in respect of the transfer to the Purchaser or its nominee(s) of the Shares or any of them.

3. COMPLETION

- (1) Completion shall take place at the offices of the Purchaser's Solicitors immediately after the signature of this agreement.
- (2) At Completion:
 - (a) the Sellers shall do or procure to be done those things set out in Part A of the schedule headed "Completion"; and
 - (b) the Purchaser shall do or procure to be done those things set out in Part B of that schedule.
- (3) If for any reason the Sellers do not do or procure to be done all those things set out in Part A of the schedule headed "Completion", the Purchaser may elect (in addition and without prejudice to all other rights or remedies available to it) to fix a new date for Completion. In particular, the Purchaser shall not be obliged to complete the purchase of any of the Shares unless the purchase of all the Shares is completed simultaneously in accordance with this agreement.

4. BASE CONSIDERATION

- (1) The Base Consideration (subject to adjustment as provided in this agreement) shall be determined and payable as follows:
 - (a) if the Net Assets are £2,800,000, the Base Consideration shall be £38,000,000 of which:
 - (i) £1,706,492 shall be payable in cash;
 - (ii) £13,293,508 shall be satisfied by the issue of Series A Notes; and
 - (iii) the balance (amounting to £23,000,000) shall be satisfied by the issue of NDS Shares; or
 - (b) if the Net Assets exceed £2,800,000, the Base Consideration shall be £38,000,000 of which:
 - (i) £1,706,492 shall be payable in cash;
 - (ii) a sum equal to the aggregate of £13,293,508 and the amount by which the Net Assets exceed £2,800,000 shall be satisfied, up to such amount as does

not result in the total nominal amount of the Series A Notes exceeding £15,000,000, by the issue of Series A Notes and, as to any balance of such aggregate amount, in cash; and

- (iii) the balance shall be satisfied by the issue of NDS Shares; or
- (c) if the Net Assets are less than £2,800,000, the Base Consideration shall be £38,000,000 less the amount by which Net Assets are less than £2,800,000 (including any deficit), of which:
 - (i) £23,000,000 shall be satisfied by the issue of NDS Shares;
 - (ii) £13,293,508 shall be satisfied by the issue of Series A Notes; and
 - (iii) the balance (if any) shall be payable in cash or result in any overpayment being refunded in cash, as stated below.
- (2) Of the Base Consideration, £20,837,798 shall be attributable to the Z Shares (including all that part as is payable in cash or satisfied by the issue of Series A Notes) and the balance shall be attributable to the Ordinary Shares.
- (3) The number of NDS Shares to be issued in respect of that part of the Base Consideration as falls to be satisfied by the issue of such shares shall be calculated by dividing the amount due to each Seller by the Issue Price, but disregarding any fractional entitlements. Those NDS Shares shall be issued in accordance with the provisions of the clause headed "Consideration Shares".
- (4) On Completion, the Purchaser shall pay the sum of £1,706,492 and issue £13,293,508 nominal of Series A Notes to the Sellers on account of that part of the Base Consideration as is to be paid in cash or satisfied by the issue of such notes pending determination of the Net Assets in accordance with the schedule headed "Completion Accounts". The Sellers shall be entitled to the cash element in the proportions shown in column (C) of the schedule headed "The Sellers" and shall be entitled to the Series A Notes in the nominal amounts of £3,661,381 in the case of C. Malir and C. Howarth, £3,586,381 in the case of J. Caddy and £2,384,365 in the case of C. Hall. Within five Business Days following the day on which the Net Assets are so determined:
 - (a) if that part of the Base Consideration as is to be paid in cash or satisfied by the issue of Series A Notes is less than £15,000,000 (being the aggregate of the cash paid and nominal amount of Series A Notes issued to the Sellers on Completion on account of such part), the Sellers shall repay to the Purchaser in cash the amount of the overpayment, together with interest on the overpayment calculated at the rate of 6 per cent. per annum from (and including) the date of Completion to (but excluding) the date of actual payment; or
 - (b) if that part of the Base Consideration as is to be paid in cash or satisfied by the issue of Series A Notes is more than £15,000,000 (being the aggregate of the cash paid and nominal amount of Series A Notes issued to the Sellers on Completion on account of such part), the Purchaser shall pay and satisfy the amount of the underpayment as follows:
 - (i) by issuing additional Series A Notes to all the Sellers other than the EBT Trustee, and the KE Trustees (KE being deemed to be entitled to the KE Trustees' proportion) having a nominal value equal to their respective entitlements in respect of the underpayment; and

- (ii) by paying to the Sellers in cash the balance of the underpayment, having regard to their respective entitlements, together with interest on the that sum calculated at the rate of 6 per cent. per annum from (and including) the date of Completion to (but excluding) the date of actual payment; and
- (c) ~~(iii) by issuing~~ ^{the Purchaser shall issue} to the Sellers NDS Shares in respect of the balance of the Base Consideration, less £8,000,000.

The NDS Shares issued pursuant to paragraph (c) above (the "Restricted Shares") will be subject to the restrictions set out in the clause headed "Lock-up of Restricted Shares" and the provisions of the clause headed "Consideration Shares".

- (5) The sum of £8,000,000 so withheld shall be satisfied by the issue of NDS Shares in three equal instalments on the first, second and third anniversaries of Completion.
- (6) The issue of NDS Shares pursuant to this clause is subject to the provisions of the clause headed "Loan Notes in lieu of NDS Shares".

5. EARN-OUT CONSIDERATION

- (1) The Earn-out Consideration shall comprise two elements, each of which shall be determined by reference to the Gross Revenues and EBIT Margin for each Earn-out Period.
- (2) Subject to subclause (4), the Earn-out Consideration for the First Period shall be a sum equal to the product of:

$$X1 \quad \times \quad \frac{Y1}{100}$$

where:

X1 is an amount calculated according to the Gross Revenues for that period, as follows:

- (a) if the Gross Revenues exceed £7,425,000 but do not exceed £12,375,000, then:

$$X1 = \frac{(\text{Gross Revenues} - £7,425,000)}{£4,950,000} \times £11,000,000;$$

or

- (b) if the Gross Revenues exceed £12,375,000, then:

$$X1 = \frac{(\text{Gross Revenues} - £12,375,000)}{£29,893} + £11,000,000;$$

and

Y1 is an amount calculated according to the EBIT Margin for that period, as follows:

- (a) if the EBIT Margin exceeds 28.94 but does not exceed 36.00, by deducting 28.94 from the EBIT Margin and multiplying the result by 14.1643; or
- (b) if the EBIT Margin exceeds 36.00, then Y1 = 100.

If in respect of the First Period either the Gross Revenues are less than £7,425,000 or the EBIT Margin is less than 28.94, no Earn-out Consideration will be payable in respect of that period.

- (3) Subject to subclause (4), the Earn-out Consideration for the Second Period shall be a sum equal to the product of:

$$X2 \quad \times \quad \frac{Y2}{100}$$

where:

X2 is an amount calculated according to the Gross Revenues for that period, as follows:

- (a) if the Gross Revenues exceed £14,727,100 but do not exceed £19,924,900, then:

$$X2 = \frac{(\text{Gross Revenues} - £14,727,100)}{£5,197,800} \times £18,000,000 ;$$

or

- (b) if the Gross Revenues exceed £19,924,900, then:

$$X2 = \frac{(\text{Gross Revenues} - £19,924,900)}{£36,568} + £18,000,000 ;$$

and

Y2 is an amount calculated according to the EBIT Margin for that period, as follows:

- (a) if the EBIT Margin exceeds 19.57 but does not exceed 29.57, by deducting 19.57 from the EBIT Margin and multiplying the result by 10; or
- (b) if the EBIT Margin exceeds 29.57, then $Y2 = 100$.

If in respect of the Second Period either the Gross Revenues are less than £14,727,100 or the EBIT Margin is less than 19.57, no Earn-out Consideration will be payable in respect of that period.

- (4) A sum equal to any loss on sale or write down in carrying value of the investment in Blue Square Shares (but not exceeding £500,000) shall be deducted from the Earn-out Consideration for the relevant Earn-out Period. Any write down shall be supported by an impairment review undertaken in accordance with FRS15. Any dispute as to the amount of any such loss on sale or write down shall be referred to the Independent Accountants in the same manner as any dispute relating to the calculation of the Earn-out Consideration.
- (5) The Earn-out Consideration in respect of each Earn-out Period:
- (a) shall be ascertained in accordance with the provisions of the schedule headed "Profit and Loss Accounts";
- (b) shall be payable in two equal instalments, the first being payable as soon as practicable after it is so ascertained (and in any event within 20 Business Days of its being so ascertained) and the second being payable one year after the end of the relevant Earn-out Period; and

- (c) subject to those provisions, shall be satisfied by the issue to the Sellers of NDS Shares, in accordance with the provisions of the clause headed "Consideration Shares", the number of NDS Shares to be so issued to be calculated by dividing the amount due to each Seller by the Issue Price, but disregarding any fractional entitlements.
- (6) The whole of the Earn-out Consideration shall be attributable to the Ordinary Shares.
- (7) From Completion and until the end of the Earn-out Period the provisions of the schedule headed "Earn-out Period" shall apply.
- (8) The issue of NDS Shares pursuant to this clause is subject to the provisions of the clause headed "Loan Notes in lieu of NDS Shares".

6. CONTINGENT CONSIDERATION

- (1) The Contingent Consideration shall be payable if (and only if):
 - (a) the Company disposes (or is deemed to dispose) of the Blue Square Shares before the fifth anniversary of Completion; and
 - (b) the net proceeds of that disposal (or deemed disposal) exceed the Reference Value (as defined below).
- (2) The Contingent Consideration shall be a sum equal to 60 per cent. of the amount by which the net proceeds of that disposal (or deemed disposal) exceed the Reference Value and for this purpose the "Reference Value" means the aggregate of (i) £500,000 and (ii) any consideration paid by the Company or any other member of the Purchaser's Group after Completion for any Blue Square Shares.
- (3) For these purposes:
 - (a) whether a disposal (or deemed disposal) of the Blue Square Shares occurs;
 - (b) the net proceeds of that disposal (or deemed disposal); and
 - (c) the amount of any Contingent Consideration,
 shall be ascertained in accordance with the provisions of the schedule headed "Contingent Consideration".
- (4) The whole of the Contingent Consideration shall be attributable to the Ordinary Shares.
- (5) The Contingent Consideration shall be payable within 15 Business Days of its amount being so ascertained and shall be satisfied by the issue by the Purchaser to the Sellers of Series B Notes, the nominal amount of Series B Notes to be so issued to each Seller being equal to the amount due to him, rounded to the nearest whole pound.
- (6) For the avoidance of doubt nothing in this agreement shall impose any obligation on the Purchaser to initiate or procure any disposal of the Blue Square Shares.

7. CONSIDERATION SHARES

- (1) The Consideration Shares will be issued credited as fully paid and will rank *pari passu* in all respects with the NDS Shares in issue at the date of issue, except that:

- (a) the Restricted Shares shall rank for any dividend or other distribution declared, paid or made on or by reference to a record date on or after the date of Completion; and
 - (b) all other Consideration Shares issued on any particular date will not rank for any dividend or other distribution declared, paid or made before, or by reference to a record date before, that date.
- (2) The Purchaser shall use all reasonable endeavours to ensure that the Consideration Shares (other than the Restricted Shares) are admitted to trading on all Recognised Exchanges on which NDS Shares are then publicly traded, following the issue of such shares.
 - (3) The Purchaser shall procure that all Consideration Shares (other than the Restricted Shares) are issued in the form of American Depositary Shares and the delivery to the Sellers of documents of title (American Depositary Receipts) in respect of such shares, as soon as practicable following their issue. The Purchaser shall bear the stamp duty reserve tax and other expenses in respect of the issue of the Consideration Shares in that form. All American Depositary Receipts in respect of any Consideration Shares (other than the Restricted Shares) issued before the date on which such shares may be sold in accordance with subsection (k) of Rule 144 under the Securities Act shall bear the following legend:

"THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE US SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT") OR WITH ANY SECURITIES REGULATORY AUTHORITY OF ANY STATE OR OTHER JURISDICTION AND MAY NOT BE REOFFERED, SOLD, ASSIGNED, PLEDGED, ENCUMBERED OR OTHERWISE TRANSFERRED EXCEPT (1) OUTSIDE THE UNITED STATES IN ACCORDANCE WITH REGULATIONS UNDER THE SECURITIES ACT, (2) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 THEREUNDER (IF AVAILABLE) OR ANOTHER AVAILABLE EXEMPTION, OR (3) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT, IN EACH CASE IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OR TERRITORY OF THE UNITED STATES OR ANY OTHER JURISDICTION. THE COMPANY SHALL HAVE THE RIGHT PRIOR TO ANY SUCH REOFFER, SALE, ASSIGNMENT, PLEDGE, ENCUMBRANCE OR OTHER TRANSFER TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/OR OTHER INFORMATION SATISFACTORY TO IT."

Appropriate stop-transfer instructions shall be delivered by the Purchaser to the Depositary with respect to all Consideration Shares which are issued in the form of American Depositary Shares before the date on which such shares may be sold in accordance with subsection (k) of Rule 144 under the Securities Act.

- (4) All Restricted Shares shall be issued in the form of Series A ordinary shares and the Purchaser shall procure that share certificates are issued in respect of those shares as soon as practicable following their issue, bearing the legend set out in subclause (3).
- (5) If so requested in writing by a Seller at any time before the expiry of one month after any date on which a Seller may dispose of, or create any Encumbrance over, any interest in any of his Restricted Shares in accordance with the provisions of the clause headed "Lock-up of Restricted Shares", the Purchaser shall:

- (a) use all reasonable endeavours to ensure that the relevant Restricted Shares are admitted to trading on all stock exchanges on which NDS Shares are then publicly traded; and
- (b) against the deposit by the relevant Seller of such Restricted Shares with the Depositary, accompanied by such ancillary authorisation as the Depositary may require, instruct the Depositary to issue to that Seller American Depositary Receipts in exchange for such Restricted Shares and bear the stamp duty reserve tax and other expenses in respect of the deposit of such Restricted Shares in exchange for American Depositary Receipts.

All American Depositary Receipts in respect of any Consideration Shares (other than the Restricted Shares) issued before the date on which such shares may be sold in accordance with subsection (k) of Rule 144 under the Securities Act shall bear the legend set out in subclause (3).

(6) The Purchaser warrants to the Sellers as follows:

- (a) neither the Purchaser nor any person acting on its behalf has engaged or will engage in any form of directed selling efforts (as defined in Regulation S under the Securities Act) in connection with the issue of the Consideration Shares;
- (b) neither the Purchaser nor any of its affiliates (as defined in Rule 501 under the Securities Act) nor any person acting on its or their behalf has made or will make any offer or sale of any security which would require the registration of the Consideration Shares under the Securities Act;
- (c) the Purchaser has filed all reports required to be filed with the SEC pursuant to the Exchange Act, if any, since its initial public offering in November 1999 and up to the date of this agreement (being its annual report on Form 20-F for the fiscal year ended 30th June 2000, the "**Purchaser Annual Report**"), and has previously furnished or made available to the Sellers a true and complete copy of the Purchaser Annual Report (including any exhibits to it);
- (d) so far as the Purchaser is aware, the Purchaser Annual Report complied at the time it was filed in all material respects with applicable requirements of the Exchange Act and the rules and regulations thereunder and, as of its date, did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; and
- (e) the audited financial statements of the Purchaser included in the Purchaser Annual Report comply in all material respects with the published rules and regulations of the SEC with respect thereto, and such audited financial statements (i) were prepared from the books and records of the Purchaser, (ii) were prepared in accordance with GAAP applied on a consistent basis (except as may be indicated therein or in the notes or schedules thereto) and (iii) present fairly the financial position of the Purchaser as of the date thereof and the results of operations and cash flows for the period then ended.

(7) Each Seller understands and agrees:

- (a) that the Consideration Shares have not been and will not be registered under the Securities Act, and may not be reoffered, sold, assigned, pledged, encumbered or otherwise transferred except in accordance with applicable law, which will limit the

persons or entities to which such securities can be transferred and which may limit the amount, timing and manner of any such transfer; and

- (b) that the Consideration Shares are "restricted securities" within the meaning of Rule 144 under the Securities Act and may not be reoffered, sold, assigned, pledged, encumbered or otherwise transferred except:

- (i) in the United States:

- (A) in a transaction exempt from the registration requirements of the Securities Act provided by Rule 144 (if available) or another available exemption; or

- (B) pursuant to an effective registration statement under the Securities Act,

in each case in accordance with any applicable securities laws of any State of the United States; or

- (ii) outside the United States in an offshore transaction complying with the provisions of Rule 904 under the Securities Act; and

- (c) that the Purchaser shall have the right, prior to any reoffer, sale, assignment, pledge, encumbrance or other transfer to be made before the date on which such shares may be sold under Rule 144, to require the delivery of an opinion of US counsel, certification and/or other information satisfactory to it confirming that such transaction has been made in accordance with paragraph (b) above.

- (8) With a view to making available the benefits of certain rules and regulations of the SEC which may at certain times permit the sale of the Consideration Shares to the public without registration, the Purchaser shall, prior to the date on which the Consideration Shares may be sold in accordance with subsection (k) of Rule 144 under the Securities Act:

- (a) make and keep public information available, as those terms are understood and defined in Rule 144, while the Purchaser is subject to the reporting requirements of the Securities Act or the Exchange Act.

- (b) file with the SEC in a timely manner all reports and other documents required of the Purchaser under the Securities Act and the Exchange Act (while it is subject to such reporting requirements);

- (c) furnish to the Seller promptly upon request a written statement by the Purchaser as to its compliance with the reporting requirements of said Rule 144, and of the Securities Act and the Exchange Act, a copy of the most recent annual report of the Purchaser, and such other reports and documents of the Purchaser and other information in the possession of or reasonably obtainable by the Purchaser as a Seller may reasonably request in availing himself of any rule or regulation of the SEC allowing a Seller to sell any such securities without registration; and

- (d) take such other action reasonably requested by a Seller to facilitate the transfer of Consideration Shares pursuant to Rule 144.

- (9) Upon the request of a Seller after the date on which the Consideration Shares may be sold in accordance with subsection (k) of Rule 144 under the Securities Act and against surrender of

the original certificates, the Purchaser shall issue or cause to be issued to the Sellers the certificates in respect of the NDS Shares without the legend set out in subclause (3).

- (10) If before the issue of any Consideration Shares the Purchaser consolidates, sub-divides or reorganises its share capital, declares or makes any capital distribution (including by way of demerger) or makes any issue by way of capitalisation or rights to holders of NDS Shares or implements any similar transaction concerning NDS Shares which requires an adjustment to be in the number of the Consideration Shares and/or the Issue Price in order to maintain the economic basis on which the Sellers' entitlement to Consideration Shares is to be calculated, the number of the Consideration Shares and/or the Issue Price will be adjusted accordingly in such manner as the Sellers and the Purchaser may agree in writing or, failing such agreement within 20 Business Days of the relevant event, as the Independent Accountants determine to be, in their opinion, fair and reasonable.

8. LOCK-UP OF RESTRICTED SHARES

- (1) Without the written consent of the Purchaser none of the Sellers shall:
- (a) before the first anniversary of Completion dispose of, or create any Encumbrance over, any interest in any of his Restricted Shares (or any other securities for the time being representing or derived from those shares, whether by way of consolidation, sub-division, capitalisation or other issue, but excluding any additional securities acquired for cash by way of rights or other issue); or
 - (b) before the second anniversary of Completion dispose of, or create any Encumbrance over more than one-third in nominal value of his Restricted Shares (or other securities referred to in paragraph (a) above); or
 - (c) before the third anniversary of Completion dispose of, or create any Encumbrance over, more than two-thirds of his Restricted Shares (or other securities referred to in paragraph (a) above).
- (2) Nothing in this clause shall prevent:
- (a) a disposal of any Restricted Shares pursuant to a court order; or
 - (b) a renunciation of a right to subscribe for shares where such right is derived from the Restricted Shares or a failure to take up any such right; or
 - (c) a Seller from accepting a general offer made for all the issued share capital of the Purchaser (other than any issued share capital held by the offeror and/or persons acting in concert with the offeror); or
 - (d) a Seller from executing an irrevocable commitment to accept such a general offer, or a disposal or agreement to dispose of shares to a person who has made or announced his intention to make, or has a bona fide intention to make such an offer; or
 - (e) if the Purchaser makes an offer to its shareholders to purchase its own shares or proposes a scheme of arrangement, a disposal or agreement to dispose of any Restricted Shares to the Purchaser pursuant to that offer or scheme; or
 - (f) a disposal of any Restricted Shares after the death of a Seller; or
 - (g) a transfer of any Restricted Shares by any trustee of the EBT into the name(s) of any new, additional or substituted trustee(s) of the EBT or into the name of any

beneficiary of the EBT pursuant to the terms of the EBT, subject to any such additional or substituted trustee(s) or beneficiary, as the case may be, first undertaking in terms reasonably acceptable to the Purchaser to observe the restrictions contained in this clause; or

- (h) a disposal by a Seller of Restricted Shares to the extent that the disposal proceeds (net of incidental costs) are required to meet any liability of that Seller in respect of breach of any of the Warranties or under the Tax Deed in excess of that part of the consideration for the sale of his Shares as is payable in cash or satisfied by the issue of Series A Notes or Series B Notes; or
 - (i) a disposal of Restricted Shares after the Purchaser or any other member of the Purchaser's Group announces a firm intention to cancel the listing or trading facility for NDS Shares on any stock exchange if such cancellation would have the effect of NDS Shares ceasing to be listed or publicly traded on any Recognised Exchange.
- (3) If pursuant to any general offer made for all the issued share capital of the Purchaser (other than any issued share capital held by the offeror and/or persons acting in concert with the offeror) a Seller acquires any securities of the offeror company (not being The News Corporation Limited or a subsidiary of The News Corporation Limited) in exchange for his Restricted Shares, the provisions of subclause (1) shall not apply to the securities so acquired.

9. LOAN NOTES IN LIEU OF NDS SHARES

- (1) This clause applies if (and only if), on the date (or the latest date) on which any instalment of that part of the Consideration consisting of:
- (a) £8,000,000 of the Base Consideration (being that part due on the first, second and third anniversaries of Completion); and
 - (b) the whole of the Earn-out Consideration,

is (but for the provisions of this clause) due to be satisfied by the issue of any NDS Shares and either:

- (a) NDS Shares are not admitted to listing or public trading on any Recognised Exchange; or
- (b) NDS Shares are admitted to listing or public trading on a Recognised Exchange but:
 - (i) the consent or approval of a regulatory or supervisory body is required for the admission of the relevant Consideration Shares to listing or public trading on such Recognised Exchange; and
 - (ii) any such consent or approval has not been obtained or has been obtained subject to conditions which remain unsatisfied (other than such formal conditions relating to allotment or delivery of documents such as evidence of allotment)

so that it is not practicable for the Sellers to receive Consideration Shares which are listed or publicly traded on any Recognised Exchange. For the purposes of this clause, no account shall be taken of any temporary suspension or curtailment of the listing or facility to deal in NDS Shares.

- (2) In the circumstances set out in subclause (1) above, the relevant instalment of the

Consideration shall be satisfied by the issue to the Sellers of Series B Notes in a nominal amount equal to the amount of that instalment, instead of by the issue of NDS Shares, the nominal amount of Series B Notes to be so issued to each Seller being equal to the amount due to him, rounded to the nearest whole pound.

10. LOANS

- (1) The Sellers shall procure that on Completion all indebtedness due from any Seller or any person connected with any Seller to the Company is satisfied in full without payment of interest.
- (2) The Sellers shall procure that on or before Completion all indebtedness (including any interest) of the Company to any Seller (full particulars of which are contained in the Disclosure Letter) shall be satisfied in full.

11. WARRANTIES

- (1) The Sellers (other than the EBT Trustee and the KE Trustees) warrant to the Purchaser that, except as fully and fairly disclosed to the Purchaser in the Disclosure Letter, each of the statements set out in the schedule headed "Warranties" is true and accurate.
- (2) Each of the Warranties set out in the several paragraphs of the schedule headed "Warranties" is separate and independent and, except as expressly provided to the contrary in this agreement, is not limited:
 - (a) by reference to any other paragraph of that schedule; or
 - (b) by anything in this agreement or the Tax Deed.
- (3) Except as expressly provided to the contrary in relation to matters fully and fairly disclosed in the Disclosure Letter, none of the Warranties shall be treated as qualified by any actual or constructive knowledge on the part of the Purchaser or any of its agents.
- (4) Each Seller agrees with the Purchaser, the Company and its employees to waive any rights or claims which he may have in respect of any misrepresentation, inaccuracy or omission in or from any information or advice supplied or given by the Company or its employees in connection with the giving of the Warranties and the preparation of the Disclosure Letter. This subclause:
 - (a) may with the prior written consent of the Purchaser be enforced by the Company and its employees against the Sellers under the Contracts (Rights of Third Parties) Act 1999; and
 - (b) may be varied or terminated by agreement between the Sellers and the Purchaser (which may also release or compromise any liability in whole or in part) without the consent of the Company or any such employee.
- (5) The liability of the Sellers in connection with the Warranties shall be subject to the limitations contained in, and to the other provisions of, the schedule headed "Limits on Warranty Claims" and any Warranty Claim shall be subject to the provisions of that schedule.
- (6) Any payment made by the Sellers in respect of a breach of the Warranties or under the Tax Deed shall be deemed to be a reduction in the Consideration.

12. SET-OFF

- (1) The Purchaser may deduct from any amount payable by it to any Seller under this agreement (but not from any amount payable in respect of any Series A Notes or Series B Notes for the time being outstanding) any sum due to it from that Seller under this agreement (including in respect of any breach of the obligations, Warranties and undertakings on the part of the Sellers) or under the Tax Deed, but in each case only in respect of a claim which has been settled.
- (2) For the purposes of this clause, a claim under either this agreement or the Tax Deed shall be treated as settled if:
 - (a) the Sellers have admitted or compromised to or with the Purchaser in writing in respect of that claim, written confirmation of any such admission or compromise not to be unreasonably withheld or delayed following any oral agreement; or
 - (b) a court of competent jurisdiction has awarded judgment in respect of that claim and no right of appeal lies in respect of such judgment or the parties are debarred by passage of time or otherwise from making an appeal.
- (3) In respect of any claim made by the Purchaser against a Seller under this agreement (including in respect of any breach of the obligations, Warranties and undertakings on the part of the Sellers) or under the Tax Deed which has not been settled by a date on which any amount is payable by the Purchaser to that Seller under this agreement, the Purchaser may withhold such amount as it considers to be a reasonable estimate of the Seller's liability in respect of the claim, but subject to the following provisions of this clause.
- (4) The Purchaser shall notify the Sellers of its intention to make any such withholding, specifying the claim in respect of which the sum is to be deducted and the amount which it considers to be a reasonable estimate of the Sellers' liability in respect of the claim. Within 15 Business Days of receipt of such notice, the Sellers may dispute the proposed withholding, in whole or in part, by notice in writing to the Purchaser, specifying that they consider the claim in question to be frivolous or vexatious and/or that the amount of the withholding is unreasonable.
- (5) If notice is received by the Purchaser as to any dispute under subclause (4), the Sellers and the Purchaser shall attempt to agree in writing the matter or item disputed by the Sellers. If such matter or item is not agreed in writing between the Sellers and the Purchaser within 20 Business Days of that notice, the matter or item in dispute shall be determined by an independent expert (the "**Independent Expert**"), who shall be:
 - (a) in the case of a dispute as to whether the Purchaser's claim is frivolous or vexatious, such barrister or solicitor of at least ten years' standing as the Sellers and the Purchaser may agree in writing or, failing such agreement within 25 Business Days of that notice, as shall be appointed for this purpose on the application of the Sellers or the Purchaser by the President of the Law Society; or
 - (b) in the case of a dispute as to whether the amount withheld is reasonable, such firm of chartered accountants as the Sellers and the Purchaser may agree in writing or, failing such agreement within 25 Business Days of that notice, as shall be appointed for this purpose on the application of the Sellers or the Purchaser by the President of the Institute of Chartered Accountants in England and Wales.

The terms of reference of the Independent Expert shall be to determine whether the Purchaser's claim is frivolous or vexatious or whether the amount withheld is reasonable, as

the case may be. If both such matters are in dispute, the first matter shall be determined before an Independent Expert is appointed to determine the second matter.

- (6) An Independent Expert shall act on the following basis:
 - (a) the Independent Expert shall act as an expert and not as an arbitrator;
 - (b) the matter in dispute shall be notified to the Independent Expert in writing by the Sellers and/or the Purchaser within 10 Business Days of the Independent Expert's appointment;
 - (c) the Independent Expert shall decide the procedure to be followed in the determination;
 - (d) the Sellers and the Purchaser shall each provide the Independent Expert promptly with all information which he reasonably requires; and
 - (e) (except as provided in subclause (11) below) the fees and expenses of the Independent Expert shall be borne equally as between the Sellers on the one hand and the Purchaser on the other hand.
- (7) Any deduction or withholding by the Purchaser under this clause shall be without prejudice to any other rights or remedies available to it. The determination of the Independent Expert as to whether any claim made by the Purchaser is frivolous or vexatious or whether the amount withheld is reasonable, as the case may be, shall be conclusive as to such matter for the purposes of this clause, but shall not prejudice or affect the rights and remedies of the Purchaser or the Sellers as to the subject matter of the claim or any defence to it.
- (8) If the Independent Expert determines that any claim made by the Purchaser is frivolous or vexatious or that the amount withheld is unreasonable, the Purchaser shall pay the amount withheld, or such part of it as is determined to have been unreasonably withheld, to the Sellers within five Business Days of that being determined.
- (9) If, on any claim in respect of which a withholding has been made being settled, the amount withheld exceeds the amount due to the Purchaser, the Purchaser shall pay the amount of the excess to the Sellers within five Business Days of the claim being settled. If such amount is payable in the form of NDS Shares, the Purchaser shall also pay to the Sellers a sum equal to all distributions which would have been received by the Sellers in respect of the relevant NDS Shares but for such withholding (except to the extent taken into account in determining the number of NDS Shares to be issued to the Sellers). If such amount is payable in the form of Series A Notes or Series B Notes the Purchaser shall also pay to the Sellers a sum equal to all interest which would have been received by the Sellers in respect of the relevant Series A Notes or Series B Notes but for such withholding (except to the extent that such interest is payable under the terms of the Series A Notes or Series B Notes to be issued to the Sellers).
- (10) If any withholding is made pursuant to this clause (whether following agreement between the parties or determination by the Independent Expert), the Sellers may by notice in writing to the Purchaser elect, at intervals of no less than six months following such agreement or determination or subsequent determination pursuant to this subclause, to refer the claim in question to the Independent Expert, who shall be appointed in the same manner and shall act on the same basis as is set out in subclause (6) and whose terms of reference shall be to determine whether or not, in light of the circumstances prevailing at the time of the reference:
 - (a) in the case of the Independent Expert referred to in subclause (5)(a), the maintenance or pursuit of the claim is now vexatious or frivolous; and/or

- (b) in the case of the Independent Expert referred to in subclause (5)(b), the amount being withheld remains reasonable.

The Sellers may elect to refer either or both such matters to the Independent Expert. If they elect to refer both such matters, the first matter shall be determined before an Independent Expert is appointed to determine the second matter. Any election to refer the reasonableness of the amount continuing to be withheld shall specify the amount by which the Sellers allege the sum withheld should be reduced and any such reference may only be made if the amount so specified is greater than a sum equal to the lower of 10 per cent. of the sum withheld or £100,000.

- (11) If the Independent Expert determines that the maintenance or pursuit of the claim in question is frivolous or vexatious and/or the amount withheld is unreasonable, the Purchaser shall pay the amount withheld, or such part of it as is determined to have been unreasonably withheld, to the Sellers within five Business Days of that being determined and the Purchaser shall bear the fees and expenses of the Independent Expert in respect of that determination. If the Independent Expert determines that the claim is not frivolous or vexatious and/or the amount withheld is reasonable (or is unreasonable but by an amount less than a sum equal to the lower of 10 per cent. of the sum withheld or £100,000), then the Sellers shall bear the fees and expenses of the Independent Expert in respect of that determination.

13. PROTECTIVE COVENANTS

- (1) Each Seller (other than the EBT Trustee and the KE Trustees) covenants with the Purchaser and the Company that he shall not:
- (a) for a period of two years from Completion be concerned in any business (except the Company or another member of the Purchaser's Group) in the United Kingdom or in any of the Republic of Ireland, Gibraltar, Australia and the Hong Kong or Macau regions of the People's Republic of China which, in each case, is engaged in the development, supply or support of gaming and betting computer software (including interactive television applications) of a kind similar to those being developed or provided by the Company at Completion; or
 - (b) for a period of three years from Completion (and except on behalf of the Company or another member of the Purchaser's Group) canvass or solicit orders for software products of a similar type to those being developed or supplied, or for services similar to those being provided, by the Company at Completion from any person who is at Completion or has been at any time within the year prior to Completion a customer of the Company; or
 - (c) for a period of three years from Completion induce or attempt to induce any supplier of the Company to cease to supply, or to restrict or vary the terms of supply, to the Company; or
 - (d) for a period of three years from Completion induce or attempt to induce any director or any employee of the Company whose basic remuneration exceeds £50,000 per annum to leave the employment of the Company; or
 - (e) for a period of five years from Completion make use of or (except as required by law or any competent regulatory body) disclose or divulge to any third party any information of a secret or confidential nature relating to the business or affairs of the Company or its customers or suppliers; or
 - (f) use or (insofar as he can reasonably do so) allow to be used (except by the Company)

any trade name used by the Company at Completion or any other name intended or likely to be confused with such a trade name.

(2) For the purposes of this clause:

(a) a Seller is concerned in a business if he carries it on as principal or agent or if:

- (i) he is a partner, director, employee, secondee, consultant or agent in, of or to any person who carries on the business; or
- (ii) he has any direct or indirect financial interest (as shareholder or otherwise) in any person who carries on the business; or
- (iii) he is a partner, director, employee, secondee, consultant or agent in, of or to any person who has a direct or indirect financial interest (as shareholder or otherwise) in any person who carries on the business,

disregarding any financial interest of a person in securities which are held for investment purposes only and listed or traded on any Recognised Exchange if that person and any person connected with him are together interested in securities which amount to less than five per cent. of the issued securities of that class and which, in all circumstances, carry less than five per cent. of the voting rights (if any) attaching to the issued securities of that class; and

(b) references to the Company include its successors in business.

- (3) Each of the restrictions in each paragraph or subclause above shall be enforceable independently of each of the others and its validity shall not be affected if any of the others is invalid.
- (4) If any of those restrictions is void but would be valid if some part of the restrictions were deleted the restriction in question shall apply with such modification as may be necessary to make it valid.
- (5) The Sellers acknowledge that the above provisions of this clause are no more extensive than is reasonable to protect the Purchaser as the purchaser of the Shares.
- (6) The covenants in this clause may be enforced by the Company (with the prior written consent of the Purchaser) against the Sellers under the Contracts (Rights of Third Parties) Act 1999. The provisions of this clause may be varied or terminated by agreement between the Sellers and the Purchaser (which may also release or compromise any liability in whole or in part) without the consent of the Company.

14. **CONFIDENTIALITY**

No Seller shall make or permit any person connected with him any announcement concerning this sale and purchase or any ancillary matter before, on or after Completion except:

- (a) with the written approval of the Purchaser; or
- (b) to the extent required by law or any competent regulatory body.

15. INDEPENDENT ACCOUNTANTS

- (1) Where any item or items in dispute or the determination of any adjustment falls to be referred, in accordance with any provision of this agreement, to Independent Accountants, it shall be referred to such firm of chartered accountants:
 - (a) as the Sellers and the Purchaser may agree in writing; or
 - (b) failing such agreement within five Business Days (in the case of items in dispute, from the expiry of the period for agreeing the item or items disputed between the Sellers and the Purchaser as set out in the relevant clause or schedule (as the case may be)), as shall be appointed for this purpose on the application of the Sellers or the Purchaser by the President of the Institute of Chartered Accountants in England and Wales.
- (2) The Independent Accountants shall act on the following basis:
 - (a) the Independent Accountants shall act as experts and not as arbitrators;
 - (b) in the case of an item or items in dispute, the item or items in dispute should be notified to the Independent Accountants in writing by the Sellers and/or the Purchaser within 10 Business Days of the Independent Accountants' appointment;
 - (c) their terms of reference shall be as set out in the relevant clause or schedule;
 - (d) the Independent Accountants shall decide the procedure to be followed in the determination;
 - (e) the Sellers and the Purchaser shall each provide (and to the extent that they are reasonably able shall procure that their respective accountants and the Purchaser shall procure that the Company provides) the Independent Accountants promptly with all information which they reasonably require and, where relevant, the Independent Accountants shall be entitled (to the extent they consider it appropriate) to base their opinion on such information and on the accounting and other records of the Company;
 - (f) the determination of the Independent Accountants shall (in the absence of manifest error) be final and binding on the parties; and
 - (g) the costs of the determination, including fees and expenses of the Independents Accountants, shall be borne equally as between the Sellers on the one hand and the Purchaser on the other hand.

16. NOTICES

- (1) Any notice or other formal communication given under this agreement may be delivered or sent by post to the party to be served at his address appearing in this agreement or by fax as follows:
 - (a) in the case of the Purchaser, to fax number 020 8476 8100, marked for the attention of the Chief Financial Officer/Company Secretary (with a copy to the Purchaser's Solicitors, fax number 020 7330 9999, marked for the attention of Keith Godfrey/Priscilla Bryans); or

- (b) in the case of the Sellers, to the Sellers' Solicitors, fax number 0114 276 6720 (marked for the attention of Andrew Darwin/Richard May,

or at such other address or fax number as that party may have notified to the other parties in accordance with this clause.

- (2) Any notice or other formal communication sent by post shall be sent by prepaid first class post (if within the United Kingdom) or by prepaid airmail (if elsewhere).
- (3) Any notice or other formal communication shall be deemed to have been given:
 - (a) if delivered, at the time of delivery; or
 - (b) if posted, at 10.00 a.m. on the second Business Day after it was put into the post; or
 - (c) if sent by fax, at the expiration of 2 hours after the time of despatch, if despatched before 3.00 p.m. on any Business Day, and in any other case at 10.00 a.m. on the Business Day following the date of despatch.
- (4) In proving service of a notice or other formal communication it shall be sufficient to prove that delivery was made or that the envelope containing the communication was properly addressed and posted either by prepaid first class post or by prepaid airmail, as the case may be) or that the fax was properly addressed and despatched, as the case may be.

17. FURTHER ASSURANCES

- (1) On or after Completion each Seller shall, at his own cost and expense, execute and do (or procure to be executed and done by any other necessary party) all such deeds, documents, acts and things as the Purchaser may from time to time require in order to vest any of the Shares in the Purchaser or its assignee or as otherwise may be necessary to give full effect to this agreement.
- (2) In relation to each of the Companies the Sellers shall procure the convening of all meetings, the giving of all waivers and consents and the passing of all resolutions as are necessary under the Companies Act 1985, its articles of association or any agreement or obligation affecting it to give effect to this agreement.
- (3) For so long after Completion as any Seller or any nominee remains the registered holder of any Share he shall hold (and direct any nominee to hold) that Share and any distributions, property and rights deriving from it in trust for the Purchaser and shall deal with the Shares and any distributions, property and rights deriving from them as the Purchaser directs; in particular, each Seller shall exercise all voting rights as the Purchaser directs or shall execute an instrument of proxy or other document which enables the Purchaser or its representative to attend and vote at any meeting of the Company.

18. ASSIGNMENTS

- (1) The Purchaser may assign the benefit of this agreement and the Tax Deed to any member of the Purchaser's Group and if it does so:
 - (a) the assignee may enforce the obligations, Warranties and undertakings on the part of the Sellers as if it had been named in this agreement as the Purchaser;
 - (b) as between the Sellers and the Purchaser, the Sellers may nevertheless enforce this agreement against the Purchaser as if that assignment had not occurred;

- (c) the assignment shall not in any way operate so as to increase or reduce the respective rights and obligations on the part of the Purchaser or its assignee on the one hand and the Sellers on the other hand; and
 - (d) if the assignee ceases to be a member of the Purchaser's Group, the Purchaser shall procure that the benefit of this agreement and the Tax Deed is re-assigned to the Purchaser or another member of the Purchaser's Group.
- (2) The EBT Trustee enters into this agreement in its capacity as trustee of the EBT. The rights and obligations on the part of the EBT Trustee under this agreement shall accordingly enure for the benefit of, and be binding on, the trustee(s) for the time being of the EBT. The KE Trustees enter into this agreement in their capacity as trustees of the KE Trust. The rights and obligations on the part of the KE Trustees under this agreement shall accordingly enure for the benefit of, and be binding on, the trustee(s) for the time being of the KE Trust.
 - (3) Except as permitted by this clause, none of the rights or obligations under this agreement may be assigned or transferred without the prior written consent of both the Sellers and the Purchaser.

19. SELLERS' ENTITLEMENTS AND RESPONSIBILITY

- (1) Except as otherwise provided in this agreement, the Sellers shall be entitled to the consideration for the sale of the Z Shares and the Ordinary Shares in the proportions shown in columns (D) and (E), respectively, of the schedule headed "The Sellers".
- (2) For the purpose of protecting the current value of the Shares, the entitlement of the Sellers to that part of the Consideration consisting of:
 - (a) £8,000,000 of the Base Consideration (being that part due on the first, second and third anniversaries of Completion); and
 - (b) the whole of the Earn-out Consideration;
 shall be subject to adjustment on each date on which any instalment of that part of the Consideration is due to be paid or satisfied (each a "Due Date").
- (3) An adjustment shall be made under this clause only if any Seller (other than the EBT Trustee) ceases to be an employee of the Company or a member of the Purchaser's Group on or before any Due Date in circumstances where he is a Bad Leaver. In such an event:
 - (a) that Seller shall not be entitled to receive that proportion of the Base Consideration and/or the Earn-out Consideration to which he would otherwise be entitled on that Due Date or on any subsequent Due Date; and
 - (b) that Seller shall be deemed to have assigned to the EBT Trustee (to be held by the EBT Trustee as part of its unallocated funds for the benefit of employees generally, rather than accruing to any sub-fund appointed by the EBT Trustee before Completion) all his entitlement to that proportion of the Base Consideration and/or the Earn-out Consideration, which shall accordingly be payable to the EBT Trustee, instead of being payable to that Seller;

and if by virtue of the above provisions KE is deemed to have assigned to the EBT Trustee his entitlement to any part of the Base Consideration and/or the Earn-out Consideration to which he would otherwise be entitled on any Due Date, the KE Trustees shall also be deemed to have assigned to the EBT Trustee (to be held by the EBT Trustee as part of its unallocated

funds for the benefit of employees generally, rather than accruing to any sub-fund appointed by the EBT Trustee before Completion) all their entitlement to that proportion of the Base Consideration and/or the Earn-out Consideration to which they would otherwise be entitled on that Due Date or on any subsequent Due Date, which shall accordingly be payable to the EBT Trustee, instead of being payable to the KE Trustees.

- (4) This subclause applies to that part of the Base Consideration and/or the Earn-Out Consideration as is referred to in subclause (2) above:
 - (a) which is payable to the EBT Trustee; and
 - (b) is referable to Shares the subject of an appointment made before Completion by the EBT Trustee to a sub-fund for the benefit of an employee of the Company and/or his family (a "Relevant Employee").

Pursuant to the powers and discretions vested in it, the EBT Trustee agrees with the Purchaser that the sale of the EBT Trustee's Shares is subject to the additional term that if a Relevant Employee ceases to be an employee of the Company or a member of the Purchaser's Group on or before any Due Date in circumstances where, if he were a Seller, he would be a Bad Leaver, that proportion of the Base Consideration and/or the Earn-Out Consideration which would otherwise accrue to the sub-fund for the benefit of that Relevant Employee and/or his family on that Due Date or any subsequent Due Date shall not accrue to such sub-fund but shall instead be held by the EBT Trustee as part of the unallocated funds of the EBT for the benefit of employees generally.

- (5) Where any obligation, warranty or undertaking in this agreement or the Tax Deed is expressed to be made, undertaken or given by two or more of the Sellers they shall be severally responsible in respect of it in the proportions shown in column (F) of the schedule headed "The Sellers", except that any liability to repay any overpayment in respect of the Base Consideration (by reason of the Net Assets being less than £2,800,000) shall be borne in the proportions shown in column (E) of that schedule, other than KE's proportion which shall be borne by the KE Trustees.
- (6) The Purchaser may release or compromise in whole or in part the liability of any Seller under this agreement or grant any time or other indulgence without affecting the liability of any other Seller.
- (7) Any consent or authority on the part of the Sellers under or in connection with this agreement or on the part of those Sellers who are parties to the Tax Deed under or in connection with the Tax Deed may be given by a majority of the Sellers, but in determining such a majority there shall be disregarded the EBT Trustee, the KE Trustees and any Seller who at the relevant time:
 - (a) has died or become bankrupt; or
 - (b) has ceased to be an employee of the Company or any member of the Purchaser's Group in circumstances where he is a Bad Leaver.

Any consent or authority so given shall bind all the Sellers.

- (8) With effect from Completion the Shareholders' Agreement dated 7th January, 2000 between the Sellers (other than the EBT Trustee and the KE Trustees) and the Company shall terminate.

20. GUARANTEE BY K. EMAMY

- (1) KE as primary obligor unconditionally and irrevocably guarantees by way of continuing guarantee to the Purchaser the payment and performance when due of all amounts and obligations by the KE Trustees under this agreement.
- (2) KE's obligations under this clause:
 - (a) constitute direct, primary and unconditional obligations to pay on demand by the Purchaser any sum which the KE Trustees are liable to pay under this agreement and to perform on demand any obligation of the KE Trustees under this agreement without requiring the Purchaser first to take steps against the KE Trustees or any other person; and
 - (b) shall not be affected by any matter or thing which but for this provision might operate to affect or prejudice those obligations, including without limitation:
 - (i) any time or indulgence granted to, or composition with, the KE Trustees or any other person; or
 - (ii) the taking, variation, renewal or release of, or refusal or neglect to perfect or enforce any right, remedy or security against the KE Trustees or any other person; or
 - (iii) any legal limitation, disability or other circumstance relating to the KE Trustees or any unenforceability or invalidity of any obligation of the KE Trustees under this agreement; or
 - (iv) any change in the KE Trustees.
- (3) KE warrants to the Purchaser that:
 - (a) the KE Trustees have the power to execute and deliver this agreement and to perform their obligations under it and have taken all action necessary to authorise such execution and delivery and the performance of such obligations;
 - (b) the execution and delivery by the KE Trustees of this agreement and the performance of their obligations under it do not and will not violate or conflict with any law, rule or regulation applicable to them, any provisions of the KE Trust, any order or judgement of any court or other agency or government applicable to the KE Trustees or any of the KE Trust's assets or any contractual restriction binding on or affecting the KE Trustees or any of the KE Trust's assets; and
 - (c) this agreement constitutes binding obligations on the KE Trustees in accordance with its terms.

21. GENERAL

- (1) Each of the obligations, Warranties and undertakings set out in this agreement (excluding any obligation which is fully performed at Completion) shall continue in force after Completion.
- (2) Unless otherwise expressly stated all payments to be made under this agreement shall be made in sterling to the party to be paid as follows:

- (a) to any Seller by delivery to him or the Sellers' Solicitors of a bankers' draft or in immediately available funds to the account of the Sellers' Solicitors at:

bank: National Westminster Bank plc,
Sheffield City Centre Branch,
Sheffield
sort code: 56-00-09
account number: 00058076

or such other account as the Seller may specify; and

- (b) to the Purchaser by delivery to it of a bankers' draft or in immediately available funds to the account of the Purchaser at:

bank: HSBC Bank plc
Cathedral Square
Peterborough
Cambridgeshire
PE1 1XL
sort code: 40-36-15
account number: 31595989

or such other account as the Purchaser may specify.

- (3) The receipt of the Sellers' Solicitors for any sum or document to be paid or delivered to a Seller will discharge the Purchaser's obligation to pay or deliver it to that Seller.
- (4) Time is not of the essence in relation to any obligation under this agreement unless:
- (a) time is expressly stated to be of the essence in relation to that obligation; or
- (b) any Seller or the Purchaser fails to perform an obligation by the time specified in this agreement and the obligee serves a notice on the defaulting party requiring it to perform the obligation by a specified time and stating that time is of the essence in relation to that obligation.
- (5) Each party shall pay the costs and expenses incurred by him in connection with the entering into and completion of this agreement. In particular, the costs or expenses of Broadview Int'l Limited, DLA, Mazars Neville Russell or KPMG relating to this agreement, the matters contemplated by it or any associated arrangements, including those involving the EBT or the KE Trust, shall be borne by the Sellers or the relevant Seller and not by the Company and the Sellers shall on demand by the Purchaser indemnify the Company against any liability in respect of such costs and expenses. The indemnity contained in this subclause may be enforced by the Company (with the prior written consent of the Purchaser) against the Sellers under the Contracts (Rights of Third Parties) Act 1999. The provisions of this clause may be varied or terminated by agreement between the Sellers and the Purchaser (which may also release or compromise any liability in whole or in part) without the consent of the Company.
- (6) This agreement may be executed in any number of counterparts. This has the same effect as if the signatures on the counterparts were on a single copy of this agreement.
- (7) The rights of each party under this agreement:
- (a) may be exercised as often as necessary;

- (b) are cumulative and not exclusive of rights and remedies provided by law; and
- (c) may be waived only in writing and specifically.

Delay in exercising or non-exercise of any such right is not a waiver of that right.

- (8) Except as expressly stated in this agreement a person who is not a party to this agreement may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.

22. **WHOLE AGREEMENT**

- (1) This agreement and the documents referred to in it contain the whole agreement between the parties relating to the transactions contemplated by this agreement and supersede all previous agreements between the parties relating to these transactions.
- (2) Each party acknowledges that in agreeing to enter into this agreement he has not relied on any representation, warranty, collateral contract or other assurance (except those set out in this agreement and the documents referred to in it) made by or on behalf of any other party before the signature of this agreement. Each party waives all rights and remedies which, but for this subclause, might otherwise be available to him in respect of any such representation, warranty, collateral contract or other assurance.
- (3) Nothing in the preceding subclause limits or excludes any liability for fraud.

23. **GOVERNING LAW**

- (1) This agreement is governed by and shall be construed in accordance with English law.
- (2) Each Seller submits to the jurisdiction of the English courts for all purposes relating to this agreement and irrevocably appoints the Sellers' Solicitors as his agent for service of process.

AS WITNESS this agreement has been signed by the parties (or their duly authorised representatives) on the date stated at the beginning of this agreement.

SCHEDULE 1

THE SELLERS

(A) <i>Name and address of Seller</i>	(B) <i>Number of and class of Shares</i>	(C) <i>Cash (£)</i>	(D) <i>Proportionate Entitlements - Z Shares</i>	(E) <i>Proportionate Entitlements - Ordinary Shares</i>	(F) <i>Proportionate liability</i>
Charles Andrew Stewart Malir 22 Antrobus Road London W4 5HY	330,000 A ordinary 350 AZ	100,000	24.726	23.842	26.000
James Mathew Caddy 11 St. Johns Road Clifton Bristol BS8 2ET	330,000 B ordinary 350 BZ	175,000	24.726	23.842	26.000
Clive Haworth 50 Drayton Avenue West Ealing London W13 0LF	330,000 C ordinary 350 CZ	100,000	24.726	23.842	26.000
Christopher Hall 199 Hammersmith Grove London W6 0NP	210,000 D ordinary 6,000 DZ	75,000	16.167	15.589	17.000
Kevin James Ali Emamy 17 Cramner Avenue Northfields London W13 9SA	60,000 E ordinary 3,529 EZ	NIL	1.280	4.585	5.000
Kevin James Ali Emamy and James Mathew Caddy (as the KE Trustees) 17 Cramner Avenue Northfields London W13 9SA	9,576 EZ	723,342	3.475	NIL	NIL
Walbrook Trustees (Guernsey) Limited P.O. Box 137 St. Peter's House Labordage St. Peter Port Guernsey GY1 3HW	83,000 F ordinary 49 FZ	533,150	4.900	8.300	NIL
			1,706,492	100.000	100.000
				100.000	100.000

SCHEDULE 2

THE COMPANY

Registered number: 3134634

Registered office: Raffety House, 2-4 Sutton Court Road, Sutton, Surrey, SM1 4TN

Date and place of incorporation: 6th December, 1995, England and Wales

Directors: J.M. Caddy C.A.S. Malir
C. Haworth C. Hall

Secretary: C.A.S. Malir

VAT number: 673 2816 22

Accounting reference date: 31st March

Auditors: Mazars Neville Russell

Authorised and issued capital: £1,012.833 divided into the classes set out in column (A), each having a nominal value of 0.01p, of which those issued are set out in column (B):

(A)	(B)
330,000 A Shares	330,000
5,600 AZ Shares	350
330,000 B Shares	330,000
5,600 BZ Shares	350
330,000 C Shares	330,000
5,600 CZ Shares	350
210,000 D Shares	210,000
96,000 DZ Shares	6,000
60,000 E Shares	60,000
12,905 EZ Shares	12,905
83,000 F Shares	83,000
6,872 FZ Shares	49
8,652,549 Deferred Shares	0
<hr/> 10,128,330 <hr/>	<hr/> 1,363,004 <hr/>

SCHEDULE 3

OBSL

Registered number: 3773643

Registered office: Raffety House, 2-4 Sutton Court Road, Sutton, Surrey, SM1 4TN

Date and place of incorporation: 19th May, 1999; England and Wales

Directors: J.M. Caddy
C.A.S. Malir

Secretary: C.A.S. Malir

Accounting reference date: 31st May

Auditors: None

Authorised and issued capital: £1,000 divided into 1,000 shares of £1 each, of which 2 have been issued, as follows:

<i>Registered shareholder</i>	<i>No. of shares</i>
The Company	2

SCHEDULE 4**WARRANTIES**

- A. General
- B. Accounts and Financial
- C. Commercial, Intellectual Property and Software
- D. Taxation
- E. Property
- F. Employment

A. GENERAL**A.1 Accuracy of schedules**

The particulars relating to the Company and OBSL set out in the schedules to this agreement are true and accurate.

A.2 Memorandum and articles of association, statutory books and returns

- (1) The copy of the memorandum and articles of association of each of the Companies which has been given to the Purchaser's Solicitors is correct, up to date and complete in all respects and has annexed or incorporated copies of all resolutions or agreements required by the Companies Act 1985 to be so annexed or incorporated.
- (2) The register of members and other statutory books and registers of each of the Companies have been properly kept and no notice or allegation that any of them is incorrect or should be rectified has been received.
- (3) All returns and particulars, resolutions and other documents which each of the Companies is required by law to file with or deliver to the registrar of companies have been duly made up and filed or delivered.
- (4) The Company has not adopted a common seal.

A.3 Sellers' other interests

None of the Sellers nor any person connected with any Seller has any interest, directly or indirectly, in any business which is or is likely to be competitive with the business of the Company.

A.4 Ownership of the Shares

- (1) The Shares constitute the whole of the issued and allotted share capital of the Company.
- (2) No person is entitled or has claimed to be entitled to require the Company to issue any share or loan capital either now or at any future date and whether contingently or not.
- (3) There is no Encumbrance on, over or affecting any of the Shares and no person has claimed to be entitled to any such Encumbrance.

A.5 Blue Square Shares

- (1) The Company is the legal and beneficial owner of the Blue Square Shares.
- (2) There is no Encumbrance on, over or affecting any of the Blue Square Shares and no person has claimed to be entitled to any such Encumbrance.
- (3) Copies of all agreements to which the Company is a party relating to the Blue Square Shares have been provided to the Purchaser's Solicitors and none of those agreements has been varied.
- (4) There are no subsisting disputes between the Company and any other person in respect of any of those agreements or the Blue Square Shares.

A.6 OBSL

- (1) The Company is the legal and beneficial owner of all the issued share capital of OBSL.
- (2) There is no Encumbrance on, over or affecting any of the shares in the capital of OBSL nor has any person has claimed to be entitled to any such Encumbrance.
- (3) Since its incorporation OBSL has not:
 - (a) traded or entered into any contract or commitment of any kind; or
 - (b) incurred any liability or obligation (whether contingently or otherwise).

A.7 No other subsidiaries, associations and branches

The Company:

- (a) does not hold or beneficially own, nor has it agreed to acquire, any securities of any other corporation (whether incorporated in the United Kingdom or elsewhere) other than the Blue Square Shares and the shares of OBSL;
- (b) is not nor has it agreed to become a member of any partnership or other unincorporated association, joint venture or consortium; and
- (c) does not have outside the United Kingdom any branch or any permanent establishment (as that expression is defined in the respective Double Taxation Relief Orders current at the date of this agreement).

A.8 Ownership of assets

- (1) The Company owned at the Accounts Date all the assets included in the Accounts and particulars of all fixed assets acquired or agreed to be acquired by the Company since the Accounts Date are set out in the Disclosure Letter.
- (2) Except for current assets offered for sale or sold in the ordinary course of trading, the Company has not since the Accounts Date disposed of any of the assets included in the Accounts or any assets acquired or agreed to be acquired since the Accounts Date.
- (3) None of the property, assets, undertaking, goodwill or uncalled capital of the Company is subject to any Encumbrance.

A.9 Vulnerable antecedent transactions

- (1) The Company has not been party to a transaction pursuant to or as a result of which an asset owned, purportedly owned or otherwise held by it is liable to be transferred or re-transferred to another person or which gives or may give rise to a right of compensation or other payment in favour of another person.
- (2) No transaction at an undervalue (within the meaning of s.423 of the Insolvency Act) relating to any of the Shares has been effected prior to the date of this agreement.

A.10 Compliance with statutes

- (1) So far as the Sellers are aware, neither the Company nor any of its officers, agents or employees (during the course of their duties), has done or omitted to do anything which is a contravention of any statute, order, regulation or the like (whether of the United Kingdom or elsewhere) giving rise to any fine, penalty or other liability or sanction on the part of the Company.
- (2) In particular (but without limiting paragraph (1) above), the Company does not carry out any activity, nor since its incorporation has it carried out any activity, or done or omitted to do anything:
 - (a) which is regulated by, or which contravenes, any statute or regulation relating to gaming or betting; or
 - (b) which is regulated by, or which contravenes, any statute or regulation concerning the protection of the environment or the generation, transportation, storage, treatment or disposal of substances capable of causing harm to man or any other living organism, or capable of damaging the environment or public health or welfare, including but not limited to controlled, special, hazardous, toxic or dangerous waste; or
 - (c) which contravenes any statute or regulation relating to bribery or corruption.

A.11 Licences and consents

The Company has all licences (including statutory licences) and consents necessary to own and operate its assets and to carry on its business in all such territories and in such manner as it does at present and none of the Sellers is aware of anything that might result in the revocation, suspension or modification of any of those licences or consents or that might prejudice their renewal.

A.12 Insider contracts

- (1) The Company is not a party to any contract or arrangement in which any of the Sellers or any person connected with any of the Sellers is interested, directly or indirectly, nor has there been any such contract or arrangement at any time since the date of incorporation of the Company.
- (2) The Company is not a party to, nor have its profits or financial position during the financial periods since its incorporation and ended on the Accounts Date been affected by, any contract or arrangement which is not of an entirely arm's length nature.

- (3) None of the Sellers nor any person connected with any Seller is a party to any outstanding agreement or arrangement for the provision of finance, goods, services or other facilities to or by the Company or in any way relating to the Company or its affairs.

A.13 Litigation

- (1) The Company is not engaged in any litigation or arbitration proceedings and there are no such proceedings pending or threatened by the Company.
- (2) The Sellers do not know of anything which is likely to give rise to any litigation or arbitration proceedings by or against the Company.
- (3) So far as the Sellers are aware, the Company is not the subject of any investigation, inquiry or enforcement proceedings or process by any governmental, administrative or regulatory body nor are the Sellers aware of anything which would give rise to any such investigation, inquiry, proceedings or process.

A.14 Insolvency

- (1) No receiver or administrative receiver has been appointed in respect of the Company or in respect of the whole or any part of its assets or undertaking.
- (2) No administration order has been made and no petition has been presented for such an order in respect of the Company.
- (3) No meeting has been convened at which a resolution shall be proposed, no resolution has been passed, no petition has been presented and no order has been made for the winding up of the Company.
- (4) The Company has not stopped or suspended payment of its debts, become unable to pay its debts (within the meaning of s.123 of the Insolvency Act) or otherwise become insolvent.
- (5) No unsatisfied judgment, order or award is outstanding against the Company and no written demand under s.123(1)(a) of the Insolvency Act has been made against the Company and no distress or execution has been levied on, or other process commenced against, any asset of the Company.
- (6) No voluntary arrangement has been proposed under s. 1 of the Insolvency Act in respect of the Company.
- (7) No circumstances have arisen which entitle any person to take any action, appoint any person, commence proceedings or obtain any order of the type mentioned in subparagraphs (1) to (6) above.

A.15 Capacity and consequences of sale

- (1) Each of the Sellers has the requisite power and authority to enter into and to perform his obligations under this agreement and the Tax Deed.
- (2) This agreement constitutes and the Tax Deed will, when executed, constitute binding obligations on the Sellers in accordance with their respective terms.
- (3) Compliance with the terms of this agreement does not and will not:

- (a) conflict with or constitute a default under any provision of:
 - (i) any agreement or instrument to which any Seller or the Company is a party; or
 - (ii) the Company's memorandum or articles of association; or
 - (iii) any lien, lease, order, judgment, award, injunction, decree, ordinance or regulation or any other restriction of any kind or character by which any Seller or the Company is bound; or
 - (b) relieve any other party to a contract with the Company of its obligations or enable that party to vary or terminate its rights or obligations under that contract; or
 - (c) result in the creation or imposition of any lien, charge or encumbrance of any nature on any of the property or assets of the Company; or
 - (d) conflict with any agreement with any other person who has been party to any negotiations or discussions with any Seller or the Company regarding the acquisition of any Shares or the business or assets of the Company or result in the Company being liable to make any payment to any person.
- (4) None of the Sellers is a "U.S. Person" as such term is defined in Regulation S under the Securities Act, nor is any Seller acting for the account or on behalf of a U.S. Person.

B. ACCOUNTS AND FINANCIAL

B.1 Accuracy of Accounts

The Accounts:

- (a) have been prepared under the historical cost convention, on the basis stated in the Accounts and in accordance with GAAP, the Companies Act 1985 and other applicable statutes and regulations;
- (b) give a true and fair view of the state of affairs of the Company as at the Accounts Date and of the profit of the Company for the period ended on the Accounts Date;
- (c) contain either provisions adequate to cover, or full particulars in notes, of all taxation (including deferred taxation) and other liabilities (whether quantified, contingent or otherwise) of the Company as at the Accounts Date; and
- (d) are not affected by any unusual or non-recurring items.

B.2 Book debts

- (1) The debts included in the Accounts have realised or, so far as the Sellers are aware, will realise, in the ordinary course of collection, their nominal amounts plus any accrued interest to which the Company is contractually entitled, less any provisions for bad and doubtful debts included in the Accounts.
- (2) None of the Sellers has any reason to believe that any debt owing to the Company at the date of this agreement (other than the debts included in the Accounts) will not in the ordinary course of collection realise its nominal amount plus any accrued interest to which the Company is contractually entitled.

B.3 Management accounts

The unaudited management accounts of the Company for the period of six months ended 30th September, 2000 (a copy of which has been initialled for the purpose of identification by the Sellers' Solicitors and the Purchaser's Solicitors) (the "**Management Accounts**") have been prepared on bases consistent with those employed in preparing the Accounts and correctly state, in all material respects, the income and expenditure of the Company for that period.

B.4 Books and records

All accounts, books, ledgers, and other financial records of the Company (other than the Accounts and the Management Accounts):

- (a) have been maintained in accordance with the Companies Act 1985; and
- (b) record all matters which are required by statute to appear in them.

B.5 Position since Accounts Date

Since the Accounts Date:

- (a) the Company has conducted its business in its normal manner;

- (b) the Company has not entered into any unusual contract or commitment or otherwise departed from its normal course of trading;
- (c) there has been no deterioration in the turnover or in the financial or trading position of the Company; and
- (d) the Company has paid its creditors within the times agreed with them and in particular, without limiting the foregoing, no debt owed by the Company has been outstanding for more than 60 days from the date of invoice.

B.6 Capital commitments

Except as disclosed in the Accounts the Company did not have any commitments on capital account outstanding at the Accounts Date and since the Accounts Date the Company has not entered into nor agreed to enter into any capital commitments.

B.7 Dividends and distributions

- (1) Except as stated in the Management Accounts, no dividend or other distribution of profits or assets, including without limitation any distribution within the meaning of Part VI and s.418 of the Taxes Act 1988, has been or agreed to be declared, made or paid by the Company since the Accounts Date.
- (2) All dividends or other distributions of profits or assets declared, made or paid since the date of incorporation of the Company have been declared, made and paid in accordance with law and its articles of association.

B.8 Borrowings and guarantees

The Company does not have outstanding any loan capital or any money borrowed or raised (including under any bank overdraft facilities, money raised by acceptances or debt factoring, or any liability (whether present or future) in respect of any guarantee or indemnity.

B.9 Government grants

The Company is not subject to any arrangement for receipt or repayment of any grant, subsidy or financial assistance from any government department or other body.

B.10 Loans

The Company has not lent any money which has not been repaid to it nor does it own the benefit of any debt (whether present or future) other than debts accrued to it in the ordinary course of its business.

B.11 Bank accounts

The statement of the Company's bank accounts and of the credit or debit balances on them (being as at a date not more than seven days before the date of this agreement) attached to the Disclosure Letter is correct and:

- (a) the Company does not have any other bank or deposit account (whether in credit or overdrawn) not included in the statement; and

- (b) the balance on the accounts as at the date of this agreement is not substantially different from the balances shown on the statement.

C. COMMERCIAL, INTELLECTUAL PROPERTY AND SOFTWARE

C.1 Interpretation

In this Part C:

"Company Software Products" means:

- (a) the products known as OpenBet and any other software products which are, or have been, marketed, sold, licensed or offered for sale by the Company other than the Reseller Products; and
- (b) any software products which are in the course of development or have been developed in the past, with a view to being marketed, sold, licensed or offered for sale in the future by the Company;

"Company Websites" means all Websites operated by or on behalf of the Company in connection with its business;

"Computer System" means the Internal Company Software, all other software and the hardware, network and telecommunications equipment and Internet access facilities used by the Company in the conduct of its business;

"Customer" means any authorised user of any Company Software Products, and **"Customers"** means all of them;

"Customer Agreements" means all agreements, arrangements and understandings under which:-

- (a) any Customer is authorised by the Company to use Company Software Products and/or the Reseller Products; and/or
- (b) any Customer receives software development and/or support services from the Company in relation to Company Software Products and/or the Reseller Products;

"Customer Lists" means all lists, databases and other collections of information owned or controlled by the Company which relate to customers of the Company (including all Customers) and regardless of the medium in which such lists are maintained;

"Customer Software Source Code" means source code for software interfaces developed by or on behalf of the Company to meet specific requirements of any Customer;

"Data Protection Legislation" means all statutes, enacting instruments, common law, regulations, directives, codes of practice, decisions and the like (whether in the United Kingdom or the European Union) concerning the protection and/or processing of personal data;

"Domain Names" means the domain names used by the Company as specified in the Disclosure Letter;

"Intellectual Property Rights" means:

- (a) copyright, patents, know-how, confidential information, database rights, and rights in trade marks and designs (whether registered or unregistered);

- (b) applications for registration, and the right to apply for registration, for any of the same; and
- (c) all other intellectual property rights and equivalent or similar forms of protection existing anywhere in the world;

"Internal Company Software" means software developed by or on behalf of the Company which is used by the Company in order to carry on its internal business operations;

"Product Trade Marks" means the trademarks (whether registered, unregistered or at the application stage) used by the Company as specified in the Disclosure Letter;

"Reseller Products" means the Bluestone Software and Informix Software each marketed by the Company in accordance with value-added reseller agreements entered into with the respective software companies; and

"Software Products Source Code" means source code for any of the Company Software Products.

C.2 Company Software Products and Trademarks

- (1) The Disclosure Letter contains a complete, accurate and up-to-date list of all Company Software Products.
- (2) The Disclosure Letter contains a complete, accurate and up-to-date list of: (a) all Product Trade Marks, (b) all other registered Intellectual Property Rights held by the Company, (c) all applications capable of proceeding to registration of Intellectual Property Rights, and (d) a list of all the Domain Names currently being used by the Company.
- (3) The Company is the sole legal and beneficial owner free from any Encumbrance or, so far as the Sellers are aware, third party claim or interest, of:
 - (a) all Intellectual Property Rights in the Company Software Products;
 - (b) the Product Trade Marks;
 - (c) the Domain Names; and
 - (d) all other Intellectual Property Rights used by the Company (apart from in the Reseller Products) which are of material significance to the conduct of the Company's business.

C.3 Intellectual Property Development

- (1) All Company Software Products, Internal Company Software, Company Websites and Product Trade Marks have been developed either (a) by employees of the Company acting in the course of their employment or (b) by third parties on legally binding written terms under which all Intellectual Property Rights in the Company Software Products, Internal Company Software, Company Websites and Product Trade Marks (as the case may be) vest absolutely in the Company.

- (2) No employees or third parties have any right to payment, attribution or other interest or claim in relation to the Company's use of the Company Software Products, Internal Company Software, Company Websites or Product Trade Marks.
- (3) The termination of employment of any employee of the Company (either by the Company or by the employee and regardless of the circumstances) does not affect the Warranties in paragraphs C.2(3), C.3(1), and C.3(2).

C.4 Customer Agreements

- (1) The Disclosure Letter contains a complete, accurate and up-to-date list of Customers, and copies of all Customer Agreements.
- (2) The Company and Customers have each complied with all obligations under the Customer Agreements, and the Sellers are not aware of any facts or matters which could result in a breach of those Customer Agreements in the future.
- (3) The Company Software Products comply in all material respects with all requirements under the Customer Agreements. No Customer has logged any material complaint in relation to the functionality or performance of any Company Software Product as this is defined in the relevant Customer Agreement or any other oral or written communication between the Customer and the Company. No Customer has, as a consequence of such complaint, withheld or threatened to withhold from the Company any moneys due under such Customer Agreement or has claimed any moneys under the warranty obligations of the Company contained in such Customer Agreement.
- (4) The Software Products Source Code has been delivered to and is in the physical possession of Ladbroke (Gibraltar) in accordance with the relevant Customer Agreement dated 21st July, 1999, but no source code for Company Software Products has been delivered to any other Customer. The Disclosure Letter describes fully and accurately the Software Products Source Code delivered to Ladbroke.
- (5) The Sellers are not aware of any use by Ladbroke of the Software Products Source Code other than in accordance with the terms of the relevant Customer Agreement.
- (6) The Disclosure Letter contains a complete, accurate and up-to-date list of Customer Agreements under which Company Software Products have been placed in escrow. The Disclosure Letter has identified the escrow agent in respect of each, and has attached copies of all documentation. The Disclosure Letter also contains a complete, accurate and up-to-date list of the source code in respect of each escrow arrangement which has been delivered by the Company to the escrow agent.
- (7) No events have occurred which entitle any Customer to obtain the release of any of the Software Products Source Code from any escrow agent, nor are the Sellers aware of any event which would entitle any Customer to call for such release, other than under the "change of control" provision in Clause 2.4.2 of the Licence and Support Agreement between Blue Square Limited and the Company dated 8th October, 1999.
- (8) The Disclosure Letter contains a complete, accurate and up to date list of Customers to whom the Company has delivered Customer Software Source Code. So far as the Sellers are aware all use by any Customer of Customer Software Source Code is in accordance with the relevant provisions of the relevant Customer Agreement.

- (9) The Company has not received any requests from any Customer for assistance in understanding, using, adapting or developing any Customer Software Source Code, or Software Products Source Code.
- (10) The Sellers are not aware of any unauthorised use, disclosure to a third party, adaptation of or loss or damage to any Customer Software Source Code or Software Products Source Code in the possession of any Customer.
- (11) So far as the Sellers are aware, no Customer has developed any software similar to the Company Software Products.
- (12) To the best of the Seller's knowledge, information and belief, no Customer, or any online end-user of any Company Software Product through any Customer, has breached any restriction in any Customer Agreement, or in any agreement between the Customer and the end-user, relating to the territories of the world in which the Company Software Products can be used online.
- (13) To the best of the Seller's knowledge, information and belief, no Customer or any online end-user of any Company Software Product is or has used any Company Software Product in contravention of any law, regulation or code of practice in any territory.
- (14) Completion does not affect the continuation in force of any Customer Agreement.
- (15) To the best of the Sellers' knowledge, information and belief, no Customer will terminate any Customer Agreement or withdraw or reduce its use of Company's services after Completion as a result of the transaction.
- (16) The Customer Lists owned and/or under the control of the Company are, so far as the Sellers are aware, accurate and up to date.
- (17) All consents from Customers which are necessary for the use of the Customer Lists in the course of the Company's business have been obtained.
- (18) The Company does not assume responsibility for operating the computer systems of any Customer.
- (19) In respect of each Customer Agreement involving the Company in providing software support services to a Customer in conjunction with other contracts or arrangements with that Customer, the revenue allocated to the software support services represents a normal commercial margin in respect of those services.

C.5 Reseller Agreements

The Company and, so far as the Sellers are aware, Bluestone and Informix have complied with all obligations under the relevant Reseller Agreements, and the Company is not aware of any facts or matters which may give rise to a claim for breach of either Reseller Agreement.

C.6 Infringements of Intellectual Property Rights

- (1) No challenge has been made to the ownership, subsistence or validity of any of the Intellectual Property Rights in the Company Software Products, the Product Trade Marks or, so far as the Sellers are aware, any other Intellectual Property Rights referred to in paragraph C.2.

- (2) No activities of the Company, nor any Intellectual Property Rights in the Company Software Products, the Internal Company Software, the Domain Names or the Product Trade Marks, so far as the Sellers are aware, infringe or are likely to infringe any Intellectual Property Rights of any third party anywhere in the world and no claim has been made against the Company or any Customer in respect of such infringement or alleged infringement.
- (3) So far as the Sellers are aware, no Customer has infringed or threatened to infringe any of the Product Trade Marks.
- (4) The Company is not aware of any unauthorised use, distribution, adaptation or other exploitation by any third party of any of the Company Software Products or any part of them (including on the Internet).
- (5) Nothing has been done by the Company or, so far as the Sellers are aware, by any third party on behalf of the Company which could jeopardise the validity or subsistence of any of the rights specified in paragraph C.2(2). All application, maintenance and renewal fees relating to Intellectual Property Rights referred to in paragraph C.2(2) capable of registration have been paid when due.

C.7 Company's Internal IT and Websites

- (1) The Company owns, or has licensed to it, all Intellectual Property Rights it requires to carry on its business as such business has been carried on during the year prior to the date of this agreement and which it requires to operate the Computer System.
- (2) There have been no downtimes, crashes or other defects in the Computer System in the 12 months prior to Completion which have materially and adversely affected the conduct of the Company's business.
- (3) The advent of the year 2000 had no impact upon the performance or functioning of the Computer System or the Company Software Products, and the Sellers have no reason to believe that the year 2000 date change will have any impact in the future.
- (4) The Disclosure Letter contains full details of the extent to which any of the Company Software Products and the Computer System is not EMU Compliant and any steps taken or proposed to be taken by the Company (including a timetable and budget) to ensure that all of the Company Software Products and the Computer System becomes EMU Compliant.

For the purposes of this warranty "EMU Compliant" means that during and after the introduction of any new currency in connection with European Economic and Monetary Union:

- (a) all functions (including, without limitation, the input, processing and presentation of financial data) currently performed or capable of being performed by the Computer System are (and will continue to be) capable of being performed in, and in relation to, both any existing currency and any new currency so introduced, as accurately and efficiently as before such introduction and without interruption or adverse change to efficiency or user operation and without incurring additional costs;
- (b) the Computer System will enable compliance with all legal requirements under legislation enacted at the date of this agreement (irrespective of the time from which such requirements come into force) applicable to any such new currency in any jurisdiction (including, without limitation, Council Regulation (EC) No. 1103/97); and

- (c) the Computer System will display and incorporate in all relevant forms, screen layouts and printouts all symbols and codes adopted by any government or any other European Union body in relation to any such new currency.
- (5) So far as the Sellers are aware, the content of the Company Websites does not violate the legal rights of any third party. So far as the Sellers are aware, there are no unauthorised hypertext links between third party websites and the Company Websites.
- (6) So far as the Sellers are aware, there have been no hacking attacks, or attempts to pirate or cause damage or disruption to the operation of the Company Websites in the 12 months prior to Completion. To the best of the Sellers' knowledge, information and belief, there have been no such events in relation to Customer Websites or other IT resources through which Company Software Products are used or made available, in the 12 months prior to Completion.

C.8 Data Handling and Data Protection

- (1) All the records and systems (including but not limited to the Computer System) and all data and information of the Company are recorded, stored, maintained or operated or otherwise held exclusively by the Company and the Company has not outsourced the operation of any part of the Computer System.
- (2) The Company has not disclosed to any third party any such records, control and other systems, data and information as are referred to in subparagraph (1) above.
- (3) The Company has complied with all relevant requirements of the Data Protection Legislation, including the following:
 - (a) the data protection principles established in that legislation;
 - (b) requests from data subjects for access to data held by it; and
 - (c) the requirements relating to the registration of data users and so far as relevant, computer bureaux.
- (4) The Company has not received any notice or allegation alleging non-compliance with the Data Protection Legislation or any of the data protection principles, or any notice requiring the Company to change or delete any data or prohibiting the transfer of data to a place outside the United Kingdom.
- (5) No individual has claimed or, so far as the Sellers are aware, has a right to claim compensation from the Company under the Data Protection Legislation for loss or unauthorised disclosure of data prior to Completion.

C.9 Suppliers

- (1) To the best of the knowledge, information and belief of the Sellers no supplier of the Company has ceased or will cease supplying it or has reduced or will reduce its supplies to it after Completion or as a result of the proposed acquisition of the Shares by the Purchaser.
- (2) All agreements between the Company and its suppliers are valid and in force. The Sellers are not aware of any past or present material breach by it or by a supplier of any agreement

between them or of anything which is likely to give rise to any claim against the Company under any such agreement.

C.10 Outstanding offers and material contracts

- (1) No offer, tender or the like which is capable of being converted into an obligation of the Company by an acceptance or other act of some other person is outstanding ("**Offers**"), except in the ordinary course of its business. The Disclosure Letter contains a complete, accurate and up-to-date list of all material Offers.
- (2) The Company is not a party to any contract, arrangement, or obligation which, whether by reason of its nature, term, scope, price or otherwise, is or is likely to be of material importance to its business, profits or assets, or which:
 - (a) is not in the ordinary course of its business; or
 - (b) is incapable of performance in accordance with its terms within 12 months of the date on which it was entered into or undertaken; or
 - (c) is expected to result in a loss to the Company on completion of performance; or
 - (d) is of an onerous nature or cannot be fulfilled or performed by the Company on time and without undue or unusual expenditure of money and effort; or
 - (e) requires an aggregate consideration payable by the Company in excess of £50,000; or
 - (f) involves the supply of products or services the aggregate sales value of which will amount to £250,000 in the current financial year; or
 - (g) involves payment by the Company by reference to fluctuations in the Index of Retail Prices or any other index; or
 - (h) requires payment of any sum by the Company in any currency other than sterling; or
 - (i) is for the provision of management or similar services to the Company and which is not terminable by it on less than three months' notice without compensation.

C.11 Agencies, etc.

The Company is not a party to:

- (a) any agency, distributorship, marketing, purchasing, manufacturing or licensing agreement or arrangement other than the Customer Agreements and the Reseller Agreements; or
- (b) any agreement or arrangement which restricts its freedom to carry on the whole or any part of its business in any part of the world in such manner as it thinks fit.

C.12 Anti-competitive arrangements

- (1) So far as the Sellers are aware, the Company is not now nor has it been, since any provision of the Competition Act 1998 has been in force, party to any agreement, arrangement or concerted practice, or nor is it now nor has it been, since any provision of the Competition

Act 1998 has been in force, involved in any business practice or conduct which infringes any provision of that Act.

- (2) The Company is not now, nor has it during the period since its incorporation been, a party to any agreement, arrangement, or concerted practice, nor is it now nor has it during the period since its incorporation been involved in any business practice or conduct in respect of which an undertaking has been given by or an order made against or in relation to it pursuant to any anti-trust or similar legislation in any jurisdiction in which it carries on business or has assets or sales, including (without limitation):
 - (a) Article 81 or 82 (formerly Articles 85 and 86) of the Treaty establishing the European Community;
 - (b) the Restrictive Trade Practices Acts 1976 and 1977 (as amended) whilst those Acts were in force;
 - (c) the Resale Prices Act 1976 (as amended) whilst that Act was in force;
 - (d) the Fair Trading Act 1973 or any secondary legislation adopted thereunder; and
 - (e) the Competition Act 1980 (as amended) regardless of whether the relevant provisions of that Act are still in force.
- (3) The Company is not now, nor has it been, since any provision of the Competition Act 1998 has been in force, party to any agreement, arrangement or concerted practice, nor is it now nor has it been, since any provision of the Competition Act 1998 has been in force, involved in any business practice or conduct, in respect of which early guidance, guidance, a decision, notice or direction has been sought, given or made pursuant to that Act.
- (4) The Company is not now nor has it during the period since its incorporation been, a party to any agreement, arrangement or concerted practice nor is it now nor has it during the period since its incorporation been involved in any business practice or conduct in respect of which:
 - (a) any request for information, statement of objections or similar matter has been received from any court, tribunal, governmental, national or supra-national authority; or
 - (b) an application for negative clearance or exemption has been made to the Commission of the European Communities.

C.13 Secret or confidential information or property

- (1) So far as the Sellers are aware, the Company has not at any time (save in the normal and proper course of the Company's day-to-day business and subject to an obligation of confidentiality or to the Company's professional advisers) disclosed to any person other than the Purchaser:
 - (a) any of the secret or confidential information or property of the Company, including (without limitation) financial information, Software Product Source Code, Customer Software Source Code, plans, statistics, documents, files, client lists, marketing information, records and papers; or
 - (b) any other information relating to the Company's business or affairs the disclosure of which might or could cause loss or damage to or adversely affect the Company; or

- (c) any secret or confidential information relating to the Company's customers, clients, employees and agents or to any other person who has or has had any dealings with it.
- (2) The Company is not now nor has it been a party to any agreement, arrangement or policy as to confidentiality of information which is void or unenforceable (whether in whole or in part).

C.14 Equipment in working order

The vehicles and office equipment of the Company:

- (a) are in good repair and condition (subject to fair wear and tear); and
- (b) are not surplus to the Company's current requirements.

C.15 Insurance

- (1) The particulars of the insurance policies effected for the benefit of the Company which are set out in the Disclosure Letter are complete and correct.
- (2) All such insurance policies are currently in full force and effect and nothing has been done or omitted to be done which would make any policy of insurance void or voidable and there is no claim outstanding under any such policy.
- (3) The Company has comprehensively insured all motor vehicles owned, hired or leased by it.

C.16 Business names

The Company does not carry on business under a name other than its own corporate name.

C.17 No powers of attorney

The Company has not granted any power of attorney or similar authority which remains in force.

D. TAXATION

D.1 General

(1) Tax returns

All necessary information, notices, accounts, statements, reports, computations, assessments and returns which ought to have been made or given have been properly and duly submitted by the Company to the Inland Revenue, HM Customs & Excise and any other relevant taxation or excise authority whether of the United Kingdom or elsewhere and all information, notices, computations, assessments and returns submitted to the Inland Revenue, HM Customs & Excise and such other authority were and remain true and accurate in all material respects and are not the subject of any material dispute nor are likely to become the subject of any material dispute with such authorities.

(2) Taxation liabilities

(a) All taxation of any nature whatsoever whether of the United Kingdom or elsewhere for which the Company has been liable or for which the Company has been liable to account (including amounts due under the PAYE system and in respect of National Insurance Contributions) has been duly paid (insofar as such taxation ought to have been paid) and without prejudice to the generality of the foregoing the Company has made all such deductions and retentions as it was obliged or entitled to make and all such payments as should have been made.

(b) The Disclosure Letter includes full particulars of all payments made and all repayments claimed by the Company since the Accounts Date pursuant to the Corporation Tax (Instalment Payments) Regulations 1998 (S.I. 1998/3175) and the computation of each such payment or claim for repayment took proper account of all relevant estimates and other information available to the Company at the time when such payment was made or at the time when any such claim for repayment was submitted to the Inland Revenue (as the case may be).

(3) Penalties and interest

The Company has not since incorporation paid or become liable to pay, and, as far as the Sellers are aware, there are no circumstances by reason of which the Company is likely to become liable to pay, any penalty, fine, surcharge or interest whether charged by virtue of the provisions of Schedule 18 Finance Act 1998, the Taxes Management Act 1970, VATA 1994 or otherwise.

(4) Investigations

The Company has not within the past twelve months received any notice of enquiry or suffered any enquiry, investigation, audit or visit by the Inland Revenue, HM Customs & Excise, Department of Social Security, or any other taxation or excise authority, and neither any Seller nor the Company is aware of any such enquiry, investigation, audit or visit planned for the next twelve months.

D.2 Distributions and other payments

(1) The Company has not at any time since incorporation repaid or agreed to repay or redeemed or agreed to redeem or purchased or agreed to purchase or granted an option under which it may become liable to purchase any shares of any class of its issued share capital.

- (2) The Company has not at any time since incorporation capitalised or agreed to capitalise in the form of shares or debentures any profits or reserves of any class or description or otherwise issued or agreed to issue any share capital other than for the receipt of new consideration (within the meaning of Part VI of the Taxes Act 1988) or passed or agreed to pass any resolution to do so.
- (3) No securities (within the meaning of Part VI of the Taxes Act 1988) issued by the Company and remaining in issue at the date of this agreement were issued in such circumstances that any interest or other distribution out of assets in respect thereof falls to be treated as a distribution under s.209(2)(d), (da) or (e) Taxes Act 1988, nor has the Company agreed to issue securities (within that meaning) in such circumstances.
- (4) All rents, annual payments and other sums of an income nature paid or payable by the Company since the Accounts Date or which the Company is under an obligation to pay in the future are wholly allowable as deductions or charges in computing income for the purposes of Corporation Tax.
- (5) Loan relationships

All interest, discounts or premiums payable by the Company in respect of its loan relationships within the meaning of Chapter II of Part IV of the Finance Act 1996 are capable of being brought into account by the Company as a debit for the purposes of that Chapter as and to the extent that they are from time to time recognised in the Company's accounts (assuming that the accounting policies and methods adopted for the purpose of the Accounts continue to be so adopted).

- (6) Capital distributions

The Company has not received any capital distribution to which the provisions of s.189 TCGA 1992 could apply.

D.3 Capital allowances

- (1) No balancing charge under the Capital Allowances Act 1990 (or other legislation relating to any capital allowances) would be made on the Company on the disposal of any pool of assets (that is to say all those assets expenditure relating to which would be taken into account in computing whether a balancing charge would arise on a disposal of any other of those assets) or of any asset not in such a pool, on the assumption that the disposals are made for a consideration equal to the book value shown in or adopted for the purpose of the Accounts for the assets in the pool or (as the case may be) for the asset.
- (2) No event has occurred since the Accounts Date otherwise than in the ordinary course of business by reason of which any balancing charge may fall to be made against or any disposal value may fall to be brought into account by the Company under the Capital Allowances Act 1990 (or other legislation relating to any capital allowances).

- (3) Leased assets

The Company has not made any claim for capital allowances in respect of any asset which is leased to or from or hired to or from the Company and no election affecting the Company has been made or agreed to be made under s.53 or s.55 Capital Allowances Act 1990 in respect of any such asset.

- (4) The Company is not a lessee under a lease to which the provisions of Schedule 12 to the Finance Act 1997 apply or could apply.

(5) Short-life assets

The Company has not made any election under s.37 Capital Allowances Act 1990 nor is it taken to have made such an election under subsection (8)(c) of that section.

(6) Long-life assets

The Company does not own a long-life asset (within the meaning of s.38A Capital Allowances Act 1990) in respect of which any claim for capital allowances would be subject to the provisions of ss.38E-G Capital Allowances Act 1990.

(7) Industrial buildings

None of the assets expenditure on which has qualified for a capital allowance under Part I of the Capital Allowances Act 1990 has at any time since that expenditure was incurred been used otherwise than as an industrial building or structure.

(8) Research and development tax relief and credits

The Company has not claimed any research and development tax relief or tax credit under the Finance Act 2000.

D.4 Capital gains**(1) Acquisition costs**

The book value shown in or adopted for the purpose of the Accounts as the value of each of the assets of the Company on the disposal of which a chargeable gain or allowable loss could arise does not exceed the amount which on a disposal of such asset at the date of this agreement would be deductible under s.38 TCGA 1992.

(2) Claims for roll-over and hold-over of gains

The Disclosure Letter sets out full particulars of all claims and elections made (or assumed in the Accounts to be made) under s.23, s.152 to s.158, s.161, s.162, s.165 or s.247 to s.248 TCGA 1992 (indicating which claims are provisional) insofar as they could affect the chargeable gain or allowable loss which would arise in the event of a disposal after the Accounts Date by the Company of any of its assets.

(3) Transactions not at arm's length

The Company has not disposed of or acquired any asset since the Accounts Date in circumstances such that the provisions of s.17 TCGA 1992 could apply to such disposal or acquisition nor given or agreed to give any consideration to which s.128(2)(b) TCGA 1992 could apply.

(4) Gifts involving the Companies

The Company does not own nor has it owned any shares on a disposal of which s.125(2) or (3) TCGA 1992 could apply nor has it received any asset by way of gift as mentioned in s.282 TCGA 1992.

(5) Disposal of debts

No chargeable gain will accrue to the Company on the disposal of any debt owed to it.

(6) Notional transfers within group

The Disclosure Letter includes full particulars of all elections made under s.171A TCGA 1992 which affect the Company.

D.5 Employees

(1) Compensation for loss of office

The Company is not under an obligation to pay nor has it since the Accounts Date paid or agreed to pay any compensation for loss of office or any gratuitous payment not deductible in computing its income for the purposes of Corporation Tax.

(2) Give-As-You-Earn

The Company does not participate in a scheme under s.202 Taxes Act 1988, and in relation to any such scheme disclosed the Company has given effect to the scheme in accordance with the contract and has complied with that section and regulations made under it.

(3) Profit-related pay

No scheme registered under Chapter III of Part V Taxes Act 1988 has at any time applied to the Company or any of its employees and no application for registration of a scheme so applying has at any time been made.

(4) Pension contributions

Since the Accounts Date the Company has not made any payment which may be wholly or partially disallowed as an expense or expense of management under s.112 Finance Act 1993 nor did any circumstances exist at the Accounts Date which could result in any payment made after that date being so disallowed.

D.6 Close companies

(1) The Company is not and has not been since incorporation a close investment-holding company as defined by s.13A Taxes Act 1988.

(2) Close company distributions

No distribution within s.418 Taxes Act 1988 has been made by the Company since incorporation.

(3) Loans by close companies

No loan or advance made by or debt incurred to or assigned to the Company falling within the provisions of s.419 Taxes Act 1988 (as extended by s.422 thereof) is outstanding or has been waived since the Accounts Date.

D.7 Groups of companies

Neither the Company nor OBSL is or has since incorporation been a member of a group of companies as defined in s.170 TCGA 1992 other than a group comprising the Company and OBSL only.

D.8 Premiums and sale and lease back of land

The Company has not entered into any transaction to which the provisions of s.34, s.35, s.36, ss.43A-G or s.780 Taxes Act 1988 have been or could be applied.

D.9 Overseas interests**(1) UK Residence**

The Company is and has since incorporation been resident in the United Kingdom for corporation tax purposes and is not and has not been treated as resident in any other jurisdiction for any tax purpose. The Company has not nor has had a branch, agency or permanent establishment outside the United Kingdom.

(2) Dual residence (group relief)

The Company is not nor has since incorporation been a dual resident company within the meaning of s.404(4) Taxes Act 1988 and the Company has not been involved in any transaction to which s.404 Taxes Act 1988 or any other provision (including any exclusion from a provision) relating to dual resident investing companies as there defined could apply.

(3) Treasury consent for migration of companies, etc.

The Company has not carried out or caused or permitted to be carried out any of the transactions (i) specified at the relevant time in s.765(1) Taxes Act 1988 otherwise than with the prior consent of H.M. Treasury and (in the case of a special as opposed to general consent) full particulars of which are contained in the Disclosure Letter or (ii) specified at the relevant time in s.765A Taxes Act 1988 without having duly provided the required information to the Board of Inland Revenue.

(4) Company migration without Treasury consent

The Company has not ceased to be resident in the United Kingdom other than in pursuance of a Treasury consent under s.765 Taxes Act 1988 without previously satisfying the requirements of s.130(2) and (3) Finance Act 1988 (full particulars of the satisfaction of those requirements being contained in the Disclosure Letter) and there are no circumstances by reason of which the Company could be liable to a penalty under s.131 Finance Act 1988 or be presumed by virtue of subsection (4) of that section to be so liable.

(5) Secondary liability for tax of migrating company

No company (not being the Company) has ceased or will cease to be resident in the United Kingdom in circumstances such that a notice might be served on the Company under s.132 Finance Act 1988 by virtue of the relationship (as specified in paragraph (a) or (b) of subsection (3) of that section) of the Company with that company on or at any time prior to Completion.

(6) Secondary liability for tax of non-resident company

(a) The Company is not and will not become liable to tax under s.191 TCGA 1992 in respect of a disposal occurring on or before the date of this agreement.

(b) The Company is not and will not become liable to tax under Schedule 28 Finance Act 2000 in respect of any amount of unpaid corporation tax of a non-UK resident company.

(7) Postponement of gains relating to foreign trades

No claim or election affecting the Company has been made (or assumed in the Accounts to be made) under s.140, s.140C or s.187 TCGA 1992.

(8) Controlled foreign companies and offshore funds

The Company does not have and has not since incorporation had any interest in a controlled foreign company as defined in Chapter IV Part XVII Taxes Act 1988 nor any material interest in an offshore fund as defined in s.759 Taxes Act 1988.

(9) Gains accruing to non-resident companies or trusts

There has not accrued any gain in respect of which the Company may be liable to Corporation Tax by virtue of the provisions of s.13 or s.87 TCGA 1992.

(10) Unremittable overseas income and/or gains

The Company has not either received nor become entitled to any income which is unremittable "overseas income" within the meaning of s.584 Taxes Act 1988, no gain has accrued to the Company to which the provisions of s.279 TCGA 1992 could apply and the Company has not made any transfer to which s.723 Taxes Act 1988 could apply.

(11) Agency for non-residents

The Company has not been nor is it assessable to tax under s.78 Taxes Management Act 1970 (including that section as modified and applied for stamp duty reserve tax), s.126 Finance Act 1995 or under s.42A Taxes Act 1988.

(12) European Economic Interest Grouping

The Company is not and will not be subject to any tax liability or liable as agent for others as a result of being at or prior to the date of this agreement a member of a European Economic Interest Grouping as defined in s.510A Taxes Act 1988.

D.10 Tax avoidance

(1) The Company has not been a party to or otherwise involved in any transaction to which any of the following provisions could apply:

s.29 to s.34 TCGA 1992;
s.116 or s.118 Taxes Act 1988;
s.399 Taxes Act 1988;
s.729 to s.746 or s.774 to s.787 in Part XVII Taxes Act 1988;
s.801A Taxes Act 1988;
Schedule 5AA Taxes Act 1988;
Schedule 23A Taxes Act 1988;
s.135 to s.138 Finance Act 1993;
s.165 to s.168 Finance Act 1994.

(2) The Company has not been a party to any transaction to which any of the following provisions have been or could be applied other than transactions in respect of which all Inland Revenue clearances have been obtained after disclosure of all material facts:

s.139 TCGA 1992;

s.135 or s.136 TCGA 1992;
 s.140A or s.140C TCGA 1992;
 s.213 to s.218 Taxes Act 1988 and s.192 TCGA 1992;
 s.219 Taxes Act 1988;
 s.703 Taxes Act 1988;
 s.776 Taxes Act 1988.

(3) Transactions between persons under common control

- (a) No transactions or arrangements involving the Company have taken place or are in existence which are such that any of the provisions of s.770A to s.773 or Schedule 28AA Taxes Act 1988 have been or could be applied to it.
- (b) The Disclosure Letter sets out full particulars of any written agreement (the "APA") pursuant to s.85(1) Finance Act 1999 in respect of any matters set out in s.85(2) Finance Act 1999 to which the Company is subject and the Company has not and will not before Completion submit to the Inland Revenue a company tax return otherwise than in accordance with the terms of the APA.

(4) Reconstruction of transactions

The Company has not been involved in any transaction or series of transactions which, or any part of which, may for any tax purposes be disregarded or reconstructed by reason of any motive to avoid, reduce or delay a possible liability to tax.

(5) Interest on debts between associated companies

The Company has not had any interest in any debt to which any of the provisions of s.61 to s.66 Finance Act 1993 have applied.

(6) Pension scheme refunds

Since the Accounts Date no payment has been made to the Company to which s.601 Taxes Act 1988 applies.

D.11 Stamp duty and stamp duty reserve tax

(1) Stamp duty

All documents in the enforcement of which the Company may be interested have been duly stamped.

(2) Stamp duty reserve tax

The Company has not since the Accounts Date incurred any liability to or been accountable for any stamp duty reserve tax and there has been no conditional agreement within s.87(1) Finance Act 1986 which could lead to the Company incurring such a liability or becoming so accountable.

(3) Depositary receipts and clearance services

The Company is not nor has it been a person falling within subsections (6), (7) or (8) of s.67 or of s.70 Finance Act 1986, and the Company has not given or become obliged to give any notification under s.68 or s.71 Finance Act 1986 and the Company has not incurred any liability to stamp duty reserve tax under s.93 to s.97 Finance Act 1986.

D.12 Value Added Tax**(1) Registration**

The Company is duly registered for the purposes of Value Added Tax with quarterly prescribed accounting periods and no such registration is pursuant to paragraph 2 of Schedule 1 to VATA 1994 or subject to any conditions imposed by or agreed with HM Customs & Excise and the Company is not (nor are there any circumstances by virtue of which it may become) under a duty to make monthly payments on account under the Value Added Tax (Payments on Account) Order 1993.

(2) VAT group

The Company is not nor has it been treated for Value Added Tax purposes as a member of any group of companies and there has been no transfer of a business as a going concern in respect of which the Company could become, or has at any time since the Accounts Date been, liable under s.44 VATA 1994 nor any supply of goods or services by the Company in respect of which s.43(1) VATA 1994 is disapplied by sub-section (1A) or (2A) of that section. No application under s.43(5), s.43B(1) or s.43B(2) involving the Company has been refused by HM Customs & Excise under s.43(5A) or s.43B(5) for the protection of the Revenue. No direction has been given under paragraph 1 of Schedule 9A to VATA 1994 either to the Company or in circumstances where the Company may be liable for any Value Added Tax assessed by that direction.

(3) Secondary liability

No act or transaction has been effected in consequence of which the Company is or may be held liable for any Value Added Tax under s.47, s.48 or s.55 VATA 1994 (agents etc., tax representatives and customer accounting on supplies of gold) or s.29 VATA 1994 (self-billing) and no direction affecting the Company has been given under paragraph 2 of Schedule 6 to VATA 1994.

(4) Compliance

The Company has complied with all statutory provisions, rules, regulations, orders and directions concerning Value Added Tax including the making on time of accurate returns and payments and the proper maintenance and preservation of records and the Company has not been given any penalty liability notice within s.64 VATA 1994, any surcharge liability notice within s.59 or s.59A of that Act, or any written warning within s.76(2) of that Act.

(5) Exemption

The Company is not nor was it partially exempt in its current or preceding value added tax year and there are no circumstances by reason of which the Company might not be entitled to credit for all Value Added Tax chargeable on supplies received and imports and acquisitions made (or agreed or deemed to be received or made) by it since the beginning of its earliest value added tax year to include a period since the Accounts Date and there are no circumstances by reason of which either regulation 107 or 108 Value Added Tax Regulations 1995 might apply (or have since the Accounts Date applied) to the Company.

(6) Valuation

No direction has been or could have been made to the Company under paragraph 1 of Schedule 6 or paragraph 1 of Schedule 7 to VATA 1994.

(7) Security

The Company has not at any time been required to give security under paragraph 4 of Schedule 11 to VATA 1994.

(8) Option to charge VAT on supplies by the Company.

The Disclosure Letter contains full particulars of all elections to waive exemption made or agreed to be made under Schedule 10 to VATA 1994 by (i) the Company or (ii) any person who is a relevant associate (as defined in paragraph 3(7) of that Schedule) in relation to the Company and in respect of each election made:

- (a) all things necessary for the election to have effect have been done and in particular any necessary notification and information has been duly given under paragraph 3(6) of that Schedule and any necessary permission under paragraph 3(9) of that Schedule has been properly obtained;
- (b) a copy of the notification and of any permission and of any other correspondence, and notes of conversations, with HM Customs & Excise in connection with the election is annexed to the Disclosure Letter; and
- (c) the land in relation to which the election has effect is not greater than that stated in the notification of the election,

and in no case has the Company charged Value Added Tax, whether on rents or otherwise, which is not properly chargeable because the Company has not made an election to waive exemption having effect in relation to the relevant supply.

(9) Landlords able to charge the Company VAT

The Company is not bound nor has it agreed to become bound by any lease, tenancy or licence in the case of which under its terms or by statute the Company is or could become liable to pay an amount in respect of Value Added Tax chargeable as a result of the making of an election to waive exemption under Schedule 10 to VATA 1994.

(10) VAT on self-supplies in development and construction

There are no past or present circumstances by reason of which the Company is or could become liable to Value Added Tax under paragraph 1 or 5 of Schedule 10 to VATA 1994 (change of use, developers) or under the Value Added Tax (Self-supply of Construction Services) Order 1989.

(11) Capital Goods Scheme

In the case of each capital item (if any) within the meaning of Part XV of the Value Added Tax Regulations 1995 (S.I. 1995/2518) ("Part XV") held by the Company at Completion in relation to which a liability under Part XV has arisen or could in future arise on the Company, the Disclosure Letter sets out:

- (a) full and accurate particulars of past adjustments under Part XV; and
- (b) full and accurate particulars of all matters to date which could be relevant in determining future adjustments under Part XV.

(12) Ability to opt to tax

There is no land or building in which the Company has an interest and in relation to which any exempt supply has been made or agreed to be made by it such that paragraph 3(9) of Schedule 10 to VATA 1994 could require it to obtain permission before making an election to waive exemption and there is no land or building in which the Company has an interest where any election to waive exemption is ineffective by virtue of paragraph 2(3A) or 2(3AA) of that Schedule.

(13) Interest in the case of official error and repayment supplement

The Disclosure Letter contains full particulars of all claims which have been or, so far as the Sellers (other than the EBT Trustee and the KE Trustees) are aware, could be made by the Company under s.78 or s.79 VATA 1994. There are no circumstances by virtue of which an assessment under s.78A VATA 1994 has been or could be made on the Company.

D.13 Capital Transfer Tax and Inheritance Tax

- (1) No transfer of value (as defined by the Inheritance Tax Act 1984) or disposal by way of gift (within the meaning of s.102 Finance Act 1986) has at any time been made by or to the Company, and there are no other circumstances by reason of which any liability in respect of Capital Transfer Tax or Inheritance Tax has arisen or could arise on the Company by way of Inland Revenue charge or otherwise.
- (2) No Inland Revenue Charge (as defined in s.237 Inheritance Tax Act 1984) is outstanding over any asset of the Company or in relation to any of the Shares and no circumstances exist which could lead to any such charge arising in the future.
- (3) There are not in existence any circumstances whereby any such power as is mentioned in s.212(1) Inheritance Tax Act 1984 could be exercised in relation to any shares, securities or assets of the Company.

E. PROPERTY

E.1 Interpretation

In this Part E:

"Licences" means:

- (a) the licence dated 14th August, 2000 granted to the Company for the occupation of the premises at Units 3 and 4, The Courtyard, Swan Centre, Fishers Lane, Chiswick, London W4 1RX; and
- (b) the licence dated 14th September, 2000 granted to the Company for the occupation of the premises at office suite 19 Swan Centre, Fishers Lane, Chiswick, London W4 1RX;

"Planning Acts" means the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Hazardous Substances) Act 1990, the Planning (Consequential Provisions) Act 1990 and the Planning and Compensation Act 1991; and

"Property" means the premises the subject of the Licences or either of them.

E.2 Sole property

The Property is the only property owned, controlled, used or occupied by the Company.

E.3 Licences

- (1) The copies of the Licences produced to the Purchaser's Solicitors are complete and neither of the Licences has been varied.
- (2) The Company has duly performed and observed all its obligations under the Licences.

E.4 Planning

- (1) The present use of the Property is the lawful use for the purposes of the Planning Acts.
- (2) No development, alterations or other works which would require any permission or consent under the Planning Acts or under any bye-laws, building regulations or other relevant legislation have been carried out by the Company without all those permissions and consents having been obtained and all conditions attached to those permissions and consents have been observed and performed.
- (3) No breach of the Planning Acts or of any bye-laws, building regulations or other relevant legislation has been committed in relation to the Property and no notice has been issued or injunction granted or applied for in respect of any breach or alleged breach of planning control or of any bye-laws, building regulations or other relevant legislation.

E.5 Disputes and notices

- (1) There are no subsisting disputes between the Company and the licensor or any third party in relation to the Licences or other matters relating to the Property or its use.
- (2) Neither any Seller nor the Company has received any notice or order affecting the Property from the licensor or any Government department, any authority or any third party.

E.6 Contingent property liabilities

- (1) The Company is not a guarantor of the tenant's covenants in any lease.
- (2) The Company has not at any time surrendered the lease of any leasehold property to the reversioner without receiving from the reversioner an absolute release from the tenant's covenants in the relevant lease and from all liability arising under the lease.
- (3) The Company has not assigned or transferred any leasehold property of which it was the original tenant or in respect of which it entered into a covenant with the landlord to observe and perform the tenant's covenants under that lease.
- (4) The Company has not conveyed or transferred any freehold property in respect of which it entered into any covenant (including an indemnity covenant) which continues to bind it.

F. EMPLOYMENT

F.1 Interpretation

In this Part F:

"Emoluments Date" means 31st October, 2000;

"Employees" means all the persons who are workers in relation to the Company;

"services agreement" means any agreement for the secondment to the Company of any person or for the provision of any consultancy service or the service of personnel to the Company;

"trade dispute" and **"trade union"** have the same meanings as in the Trade Union and Labour Relations (Consolidation) Act 1992;

"worker" has the same meaning as in section 230 of the Employment Rights Act 1996 but includes a director and any officer whether or not he is a worker (as so defined).

References to a "contract of employment" includes any other contract as referred to in that section and, in relation to a director or other officer, includes the terms on which he holds the directorship or other office. References to "employ" and "employment" have a corresponding meaning.

F.2 Particulars disclosed

Full particulars or, in the case of a document, a copy of the following are contained in or by annex to the Disclosure Letter:

- (a) the names of all the Employees, any person who has accepted an offer of employment by the Company but whose employment has not yet started and of any Employee who has given, or has been given, notice of termination of his employment;
- (b) the terms and conditions on which the persons referred to in (a) above are employed or have been offered employment, including without limitation:
 - (i) their emoluments;
 - (ii) the rate of their emoluments as at the Emoluments Date;
 - (iii) any arrangement or practice under which any Employee may receive, or any person has since the Accounts Date received, any payment, whether contractual, customary or discretionary by reference to his own performance or the performance of the Company;
 - (iv) any arrangement or practice regarding redundancy payments, whether contractual, customary or discretionary, above the statutory payment; and
 - (v) any share option scheme or other incentive arrangement;
- (c) any services agreement;

- (d) any written employment practice or policy operated in relation to the Employees or any group of them, whether contractual, customary or discretionary; and
- (e) any loan or other financial assistance provided to any Employee, or past or prospective Employee which is outstanding.

F.3 Employees

- (1) The Company has complied in all material respects with its obligations to applicants for employment, its Employees and former employees.
- (2) The Company does not employ or have any obligation to employ or have seconded to it any person other than the Employees.
- (3) No proposal, assurance or commitment has been communicated to any Employee regarding any change to his terms of employment or working conditions or regarding the continuance, introduction, increase or improvement of any benefit or any customary or discretionary arrangement or practice and no negotiations have commenced for any such matter.
- (4) All the Employees' contracts of employment and any services agreement are terminable by the Company on three months' notice or less without compensation (other than compensation pursuant to the Employment Rights Act 1996).
- (5) The Company has no liability to pay compensation for loss of office or employment or a redundancy payment to any Employee or to make any payment under any provision of the Employment Rights Act 1996 or any payment for breach of any services agreement and no such sums have been paid (whether pursuant to a legal obligation or *ex gratia*) since the Accounts Date.
- (6) There is no term of employment of any Employee which provides that a change in control or ownership of the Company entitles him to treat the change as amounting to a breach of the contract or entitling him to any payment, additional period of notice or other benefit whatsoever or entitling him to treat himself as redundant or otherwise dismissed or released from any obligation.
- (7) Except in respect of reimbursement of out-of-pocket expenses and normal accruals of emoluments after the Accounts Date, no sum is owing or promised to any Employee or under any services agreement.
- (8) Since the Emoluments Date no change has been made in the rate of the emoluments of any Employee.

F.4 Disputes, investigations, collective redundancies, collective agreements and representation

- (1) No claim in relation to any Employee or former employee has been made or threatened against the Company and which remains outstanding, nor are there any disciplinary proceedings current or pending in respect of any Employee or former employee.
- (2) No enquiry or investigation in relation to any Employee has been made or threatened by the Commission for Racial Equality, the Equal Opportunities Commission, any health and safety enforcement body, the Occupational Pensions Advisory Service, the Pensions Ombudsman or the Occupational Pensions Regulatory Authority in respect of any act, event, omission or other matter arising out of or in connection with:

- (a) any application for employment by any person; or
- (b) the employment (including terms of employment, working conditions, benefits and practices) or termination of employment of any person;

and the Sellers are not aware of any circumstance which may give rise to any such claim or investigation.

- (3) There is not, and during the three years preceding the date of this agreement there has not been, any industrial action affecting the Company and the Sellers are not aware of any circumstance which might give rise to industrial action.
- (4) No association, trade union, works council or any other body or persons representing any of the Employees is recognised, or has claimed recognition, by the Company for any purpose.
- (5) The Company is not a party to any collective agreement, dismissal procedures agreement, union membership agreement, trade dispute or proceedings before any court or tribunal under or by virtue of the provisions of the Trade Union and Labour Relations (Consolidation) Act 1992.
- (6) The Sellers are not aware of any circumstance which might give rise to the Company becoming a party to any collective agreement, dismissal procedures agreement, union membership agreement, trade dispute or proceedings under or by virtue of the provisions of the Trade Union and Labour Relations (Consolidation) Act 1992.
- (7) The Sellers are not aware of any circumstances that may give rise to any dispute or other claim by former employees against the Company whether or not as a result of Completion.

F.5 Retirement/Death/Disability Benefits

- (1) The Company has not paid, provided or contributed towards, and the Company is not under any obligation or commitment (whether or not legally enforceable) to pay, provide or contribute towards, any Retirement/Death/Disability Benefit for or in respect of any Employee (or any spouse, child or dependant of any Employee).
- (2) For these purposes "Retirement/Death/Disability Benefit" means any pension, lump sum, gratuity or other like benefit given or to be given on retirement or on death, or in anticipation of retirement, or, in connection with past service, after retirement or death, or to be given on or in anticipation of or in connection with any change in the nature of the service of the worker in question or given or to be given on or in connection with the illness, injury or disability of, or suffering of any accident by, a worker.

F.6 EBT and incentives

- (1) The copy of the Trust Deed constituting the EBT which has been given to the Purchaser's Solicitors is correct, up to date and complete in all respects.
- (2) Full particulars are contained in the Disclosure Letter of:
 - (a) all agreements or arrangements between the Company and the EBT Trustee relating to the EBT;

- (b) all awards or grants made by the EBT Trustee to any beneficiary of the EBT (whether contingently or otherwise).
- (3) The assets of the EBT are sufficient to discharge in full all obligations or other commitments (whether or not legally enforceable) on the part of the Company or the EBT Trustee in respect of the provision of such awards or grants.
- (4) Except for such awards or grants made by the EBT Trustee, the Company has not provided, and the Company is not under any obligation or commitment (whether or not legally enforceable) to provide, to any Employee, or to contribute towards the cost of providing, any share option or other similar incentive involving participation in the share capital of the Company or which is linked to the performance of the Company's business or any part of it.

SCHEDULE 5

LIMITS ON WARRANTY CLAIMS

1. Exclusions

- (1) The Sellers shall not be liable in respect of a Warranty Claim (other than a Tax Warranty Claim) if and to the extent that it relates to any liability or obligation on the part of the Company:
- (a) for which provision is made in the Accounts; or
 - (b) which would not have arisen but for a change in legislation made after the date of this agreement (whether relating to taxation, rates of taxation or otherwise) or the withdrawal of any extra-statutory concession previously made by the Inland Revenue or other taxing authority (whether or not the change purports to be effective retrospectively in whole or in part); or
 - (c) which would not have arisen but for a change after Completion in the accounting bases upon which the Company values its assets; or
 - (d) to pay employer's National Insurance contributions in respect of any distribution of the assets of the EBT.

(2) If:

- (a) provision is made in the Completion Accounts in respect of any liability or obligation on the part of the Company; and
- (b) the relevant liability or obligation on the part of the Company also gives rise to a Warranty Claim (other than a Tax Warranty Claim),

then, in assessing any damages or loss suffered by the Purchaser in respect of that Warranty Claim, due allowance shall be made for the amount so provided in the Completion Accounts.

(3) If:

- (a) provision is made in the Profit and Loss Account for either Earn-out Period in respect of any liability or obligation on the part of the Company and that provision results in a reduction in the Earn-out Consideration which would otherwise have been payable in respect of that period; and
- (b) the relevant liability or obligation on the part of the Company also gives rise to a Warranty Claim,

then, in assessing any damages or loss suffered by the Purchaser in respect of that Warranty Claim, due allowance shall be made for the amount by which the Earn-out Consideration was so reduced.

2. Threshold

The Sellers shall not be liable in respect of any Warranty Claim unless the amount of all Warranty Claims, when aggregated with any and/or all claims made under the Tax Deed, (or all such claims which might have been made but for the previous operation of this paragraph

or the corresponding provision in the Tax Deed) exceeds £300,000, in which case the whole amount may be recovered by the Purchaser.

3. Upper limit

- (1) The maximum aggregate liability of each Seller, other than KE, in respect of the Warranties and under the Tax Deed (other than under clause 2(1) (g) of the Tax Deed) shall not exceed the total consideration for the sale of his Shares. The maximum aggregate liability of KE in respect of the Warranties and under the Tax Deed (other than under that clause of the Tax Deed) shall not exceed the total consideration for the sale of his Shares and those Shares sold by the KE Trustees.
- (2) For this purpose, the value of that part of such consideration as is satisfied in Consideration Shares shall be calculated on the basis of the Issue Price, except to the extent that the relevant Seller realises cash for any of his Consideration Shares on a *bona fide* sale to a person not connected with him, in which case the value of those Consideration Shares shall be deemed to be a sum equal to the proceeds of sale (less any costs of disposal).

4. Time limits

The liability of the Sellers in respect of the Warranties shall terminate (but without prejudice to the rights and obligations of the parties under the Tax Deed):

- (a) on the seventh anniversary of Completion in respect of those matters set out in Part D (Taxation) of the schedule headed "Warranties" and any other matters so far as they relate to taxation; and
- (b) on the second anniversary of Completion in respect of all other matters contained in that schedule,

except in respect of any Warranty Claim of which notice is given to the Sellers or the Sellers Solicitors before the relevant date. The liability of the Sellers in respect of any Warranty Claim shall in any event terminate if proceedings in respect of it have not been commenced within twelve months of service of notice of that Warranty Claim unless the Sellers shall have assumed conduct of the claim in question in accordance with the provisions of this schedule or the Tax Deed.

5. Notice of Warranty Claims

If the Purchaser becomes aware of a matter which is likely to give rise to a Warranty Claim (other than a Tax Warranty Claim), the Purchaser shall give notice of the relevant facts to the Sellers as soon as reasonably practicable after becoming aware of those facts, together with particulars of the amount claimed or likely to be claimed (to the extent then ascertained).

6. Conduct of third party claims

If a Warranty Claim (other than a Tax Warranty Claim) arises as a result of or in connection with a liability or alleged liability to a third party (a "Third Party Claim"), then the Sellers may elect to assume the conduct of any appeal, dispute, compromise or defence of the Third Party Claim and of any incidental negotiations on the following terms:

- (a) the Sellers shall first indemnify and secure the Purchaser and the Company to the Purchaser's reasonable satisfaction against all liabilities, charges, costs and expenses which they may incur in taking any such action as the Sellers may require under this paragraph;

- (b) the Purchaser shall procure the Company to make available to the Sellers such persons and all such information as the Sellers may reasonably require for assessing, contesting, appealing or compromising the Third Party Claim;
- (c) the Purchaser shall procure that the Company takes such action to contest, appeal or compromise the Third Party Claim as may be requested by the Sellers and does not make any admission of liability, agreement, settlement or compromise in relation to the Third Party Claim without the approval of the Sellers; and
- (d) the Sellers shall keep the Purchaser promptly informed of the progress of the Third Party Claim and provide the Purchaser with copies of all relevant documents and such other information in their possession as may be requested by the Purchaser;

but nothing in this paragraph shall require the Purchaser to do anything which in the reasonable opinion of the Purchaser would be prejudicial in any material respect to the goodwill of the business of the Company or any member of the Purchaser's Group or to their commercial interests as the owner of any such business.

7. Mitigation

Nothing in this agreement shall be deemed to relieve the Purchaser from any common law duty to mitigate any loss or damage incurred by it as a result of any breach of the Warranties.

8. Recovery from third parties

If:

- (a) any Seller makes a payment in respect of a Warranty Claim, other than a Tax Warranty Claim, (the "Damages Payment"); and
- (b) within 24 months of the making of the relevant payment the Company or the Purchaser receives any sum (other than from another Seller) which would not have been received but for the circumstance which gave rise to that Warranty Claim;
- (c) the receipt of that sum was not taken into account in calculating the Damages Payment; and
- (d) before receipt of that sum, but after taking into account the Damages Payment, the Purchaser has been compensated in full for the loss or liability which gave rise to the Warranty Claim in question,

the Purchaser shall, promptly on receipt of that sum by it or the Company, repay to that Seller an amount equal to the lower of (i) that sum and (ii) the Damages Payment, after deducting (in either case) all costs incurred by the Purchaser or the Company in recovering that sum and any taxation payable by the Purchaser or the Company by virtue of its receipt.

9. Tax Warranty Claims

- (1) Except as expressly provided otherwise, the liability of the Sellers in connection with any Tax Warranty Claim shall be subject to the limitations contained in, and to the other provisions of this schedule.

- (2) In addition, the limitations and provisions set out at clauses 4, 5(3), 6, 7 and 9 of the Tax Deed shall apply to the liability of the Sellers in connection with any Tax Warranty Claim.

10. **Scope of limitations**

Nothing in this schedule or in the Disclosure Letter shall qualify or limit the liability of a Seller:

- (a) in relation to those Warranties set out in paragraphs A.1, A.4 and A.6 of the schedule headed "Warranties"; or
- (b) any Warranty Claim attributable to the fraud, dishonesty or wilful concealment on the part of that Seller or his agents or advisers.

SCHEDULE 6**COMPLETION****Part A**

At Completion the Sellers shall procure:

- (a) the delivery to the Purchaser of:
 - (i) duly executed transfers in favour of the Purchaser or its nominee(s) of all the Shares;
 - (ii) the share certificate(s) representing the Shares and all the issued shares of OBSL (or an express indemnity in a form satisfactory to the Purchaser in the case of any found to be missing);
 - (iii) such waivers or consents as may be necessary to enable the Purchaser or its nominee(s) to become the registered holder of all the Shares;
 - (iv) the certificate of incorporation, minute books, company seal (in the case only of OBSL), statutory registers and share certificate books of each of the Companies;
 - (v) the Tax Deed duly executed by the Sellers;
 - (vi) the service agreements of each of the Executives with the Company and the Purchaser in the Agreed Form, duly executed by the Company and the Executives;
 - (vii) the resignations of all the directors (except James Caddy) and the secretary of each of the Companies, in the Agreed Form;
 - (viii) the resignation of the auditors of each of the Companies, confirming, in accordance with section 394 of the Companies Act 1985, that there are no circumstances connected with their resignation which should be brought to the attention of the members or creditors of the relevant Company and that no fees are due to them;
- (b) that a board meeting of each of the Companies is held at which it is resolved that:
 - (i) such persons as the Purchaser nominates are appointed as additional directors and the secretary of the Company;
 - (ii) its registered office is changed to One London Road, Staines, Middlesex TW18 4EX;
 - (iii) in the case of the Company, the transfers referred to in paragraph (a) above (subject only to their being duly stamped) are approved for registration;
 - (iv) Arthur Andersen are appointed as auditors; and
 - (v) in the case of the Company, its bank mandates are revised in such manner as the Purchaser requires; and
- (c) that a unanimous written resolution of all the members of the Company is adopted in the Agreed Form.

Part B

At Completion the Purchaser shall:

- (a) pay the sum of £1,706,492 and issue £13,293,508 nominal of the Series A Notes to the Sellers on account of the Base Consideration;
- (b) deliver to the Sellers' Solicitors a copy of the Series A Note Instrument and the certificates in respect of the Series A Notes referred to in paragraph (a) above, duly executed by the Purchaser;
- (c) deliver to the Sellers' Solicitors a duly executed counterpart of the Tax Deed; and
- (d) deliver to the Sellers' Solicitors a duly executed counterpart of the service agreements of each of the Executives with the Company and the Purchaser in the Agreed Form, duly executed by the Purchaser.

SCHEDULE 7

COMPLETION ACCOUNTS

Part A. Preparation of draft Completion Accounts

1. Preparation of draft Completion Accounts

On the day falling 90 days after Completion (or if that is not a Business Day, on the next day which is a Business Day), the Purchaser shall procure that the Company delivers to the Sellers a consolidated profit and loss account for the period from 1st April, 2000 and ending on the date of Completion and a consolidated balance sheet of the Company as at the close of business on the date of Completion, with appropriate notes, (the "Draft Completion Accounts"). The Draft Completion Accounts shall include a statement of the Net Assets, shall be prepared in the form, and include the items, shown at part B of this schedule and in accordance with the following:

- (a) the specific policies set out in part C of this schedule; and
- (b) to the extent not covered by (a), the accounting policies, principles, practices, evaluation rules and procedures, methods and bases adopted by the Company in the preparation of the Accounts; and
- (c) to the extent not covered by (a) and (b), GAAP in force at Completion.

Save to the extent required to give effect to Part C of this Schedule, the Draft Completion Accounts shall be prepared by reference to the circumstances prevailing at the close of business on the date of Completion, without regard to any circumstances subsequently arising as a consequence of Completion, but so as to give effect to any other items that would fall to be treated as adjusting post balance sheet events under SSAP 17 by reference to the information available to the Company at the expiry of 90 days after Completion (but disregarding any information becoming available after the expiry of the period of 90 days referred to above).

2. Notification of disputed items

Within 10 Business Days of delivery to the Sellers of the Draft Completion Accounts, the Sellers shall notify the Purchaser in writing of any item or items they wish to dispute together with the reasons for such dispute and a list of proposed adjustments. An adjustment may only be proposed if, in respect of any category of items, it exceeds £5,000 and, together with other proposed adjustments, exceeds £50,000. If, by the expiry of such period of 10 Business Days, no such notice is received by the Purchaser or the Sellers have notified the Purchaser that there are no items they wish to dispute, the Draft Completion Accounts shall constitute the Completion Accounts for the purposes of this agreement.

3. Reference of disputes to Independent Accountants

If notice is received by the Purchaser as to any item in dispute under paragraph 2, the Sellers and the Purchaser shall attempt to agree in writing the item or items disputed by the Sellers and any other item or items which, following receipt of notice of the items disputed by the Sellers, the Purchaser notifies the Sellers that it wishes to adjust. If such item or items are not agreed in writing between the Sellers and the Purchaser within 20 Business Days of the delivery to the Sellers of the Draft Completion Accounts, the item or items in dispute shall be determined by the Independent Accountants, whose terms of reference shall be to determine

the amount of the item or items in dispute (taking into account the provisions of this agreement relating to the form and content of the Completion Accounts and calculation of Net Assets) within 25 Business Days of receipt of notice pursuant to this paragraph.

The Draft Completion Accounts, adjusted to reflect the item or items as agreed between the Sellers and the Purchaser in writing in accordance with this paragraph or as determined by the Independent Accountants, shall constitute the Completion Accounts for the purposes of this agreement.

4. **Provision of information**

The Sellers shall and shall procure that the Sellers' Accountants shall provide the Purchaser and the Purchaser's Accountants with all information, assistance and access to books and records of account, documents, files and papers and information stored electronically which they reasonably require for the purposes of this schedule. The Purchaser shall and shall procure that the Company and that the Purchaser's Accountants shall provide the Sellers and the Sellers' Accountants with all information, assistance and access to stock, books and records of account, documents, files, papers and information stored electronically which they may reasonably require for the purposes of this schedule.

Part B. Proforma Statement of Net Assets

	£	£
Investment in Blue Square		X
Tangible Fixed Assets		
Cost	X	
Accumulated Depreciation	(X)	
Fixed Assets		<u>X</u>
Stocks and work-in-progress	X	
Trade Debtors, net of provisions	X	
Accrued Income	X	
Prepaid expenses	X	
Other debtors	X	
Cash at bank	X	
Cash in hand	X	
Current Assets		<u>X</u>
Trade creditors	(X)	
Payments on account	(X)	
Deferred income	(X)	
Social security and PAYE	(X)	
UK Corporation tax	(X)	
VAT	(X)	
Accrued expenses	(X)	
Other creditors	(X)	
Current liabilities		<u>(X)</u>
Provision for warranty claims		(X)
Deferred tax (provision) asset		(X)
NET ASSETS		<u>X</u>

**Part C. Specific policies for preparation of the
Completion Accounts**

1. The investment in Blue Square Shares shall be stated at a value of £500,000.
2. The value of any other intangible fixed assets shall be stated at zero.
3. Turnover shall represent revenue received or receivable by the Company for goods and services provided in the ordinary course of business, net of trade discounts and credit notes, value added tax and other sales-related taxes.

Revenue for the provision of software licences, development services and support services shall be recognised as follows:

- for development projects with or without associated product sales, see appendix A ;
- for "time and materials" work, see appendix B;
- for product sales and licences where there is no development contract, revenue shall be recognised on delivery to the customer in accordance with a contract, firm purchase order, letter of engagement or other unconditional commitment on the part of the customer in place at Completion or other evidence to the satisfaction of the Purchaser's Accountants as to sufficient detail on applicable terms and conditions; and
- support and maintenance revenue shall be recognised evenly over the period of the relevant contract.

In any instance where revenue recognition depends on acceptance by a customer, such acceptance by the customer shall be determined by reference to the terms of the relevant contract or purchase order.

4. In any instance where a software licence is granted to a customer and development work is performed for that customer but no support contract is entered into with the customer (for this purpose, a contract shall be treated as entered into if there is a contract, a firm purchase order, letter of engagement or other unconditional commitment on the part of the customer or other evidence to the satisfaction of the Purchaser's Accountants as to sufficient detail on applicable terms and conditions) within 90 days after Completion, a warranty provision of 10% of the revenue recognised shall be made. Any unused element of this provision shall be released 12 months following the final acceptance by the customer of the work performed or on the expiry of any warranty period specified in the relevant contract. Appropriate further provision shall be made for any disputes with customers, if evidenced in writing. Where a subsequent support contract is entered into, the provision shall be released with effect from the date when the support obligation takes effect.
5. Provision shall be made for any bad or doubtful debts as at the date of Completion. Any debt more than 90 days past due shall be provided for to the extent of 25% of its value, any debt more than 120 days past due shall be provided for to the extent of 50% of its value and any debt more than 180 days past due shall be provided for in full. In determining these provisions, amounts in respect of UK VAT shall be disregarded. For the avoidance of doubt, no provision shall be made in respect of any debt which is paid prior to the expiry of the period of 90 days after Completion. Similarly, any debt which conclusively proves to be bad during such period shall be written-off in full.

6. Subject to paragraph 8 below, provision shall be made for all amounts due or expected to be due to any of the Sellers or other employees in respect of remuneration and benefits referable to the period up to Completion under arrangements entered into prior to Completion.
7. *Provision shall be made for current and deferred corporation tax on the taxable profits earned in the period from the Accounts Date to the date of Completion, calculated as if the date of Completion represented the end of the Company's accounting period.*
8. Any assets or liabilities of the EBT shall be disregarded in the determination of the Net Assets. A total balance sheet provision of £377,181 shall be made in respect of employer's National Insurance that may become payable on the distribution of the assets of the EBT and in respect of the accrued bonus of £550,000. No further National Insurance shall be provided for in respect of distributions of assets of the EBT. Corporation tax relief will be shown as available on National Insurance of £377,181. The Completion Accounts will also show corporation tax relief for cash contributed to the EBT of £350,000 in the period and accrued relief on the sum of £535,000 contributed before 31st March, 2000.
9. The Completion Accounts shall show corporation tax relief on the accrued bonus of £550,000.

SCHEDULE 8**PROFIT AND LOSS ACCOUNTS****Part A. Preparation of the Profit And Loss Accounts****1. Preparation of draft Profit and Loss Accounts**

On the day falling 60 days after the end of each Earn-out Period (or if that is not a Business Day, on the next day which is a Business Day), the Purchaser shall procure that the Company delivers to the Sellers a consolidated profit and loss account of the Company and any subsidiaries for that period (each a "**Draft Profit and Loss Account**"). Each Draft Profit and Loss Account shall be prepared from the audited financial statements of the Company and any subsidiaries for the relevant Earn-out Period (but with such adjustments as may be necessary to give effect to the provisions of this agreement) and shall show the Gross Revenues, the EBIT, the EBIT Margin and the resulting amount (if any) of the Earn-out Consideration for that period. Each Draft Profit and Loss Account shall be prepared in the form, and include the items, shown at part B of this schedule and in accordance with the following:

- (a) the specific policies set out in part C of this schedule;
- (b) to the extent not covered by (a), the accounting policies, principles, practices, evaluation rules and procedures, methods and bases adopted by the Company in the preparation of the Accounts; and
- (c) to the extent not covered by (a) and (b), GAAP in force at the date of this agreement.

Save to the extent required to give effect to Part C of this Schedule, each Draft Profit and Loss Account shall be prepared by reference to the circumstances prevailing at the close of business on the date on which the relevant Earn-out Period ends, without regard to any circumstances subsequently arising, but so as to give effect to any other items that would fall to be treated as adjusting post balance sheet events under SSAP 17 by reference to the information available to the Company at the expiry of 60 days after the end of the relevant Earn-out Period (but disregarding any information becoming available after that date).

2. Notification of disputed items

Within 10 Business Days of delivery to the Sellers of a Draft Profit and Loss Account, the Sellers shall notify the Purchaser in writing of any item or items they wish to dispute together with the reasons for such dispute and a list of proposed adjustments. An adjustment may only be proposed if, in respect of any category of items, it exceeds £5,000 with regard to Gross Revenues or £2,500 with regard to EBIT and, together with other proposed adjustments, it would affect Gross Revenues by more than £25,000 or EBIT by more than £10,000 respectively. If, by the expiry of such period of 10 Business Days, no such notice is received by the Purchaser or the Sellers have notified the Purchaser that there are no items they wish to dispute, the Draft Profit and Loss Account shall constitute the Profit and Loss Account for the relevant Earn-out Period for the purposes of this agreement.

3. Reference of disputes to Independent Accountants

If notice is received by the Purchaser as to any item in dispute under paragraph 2, the Sellers and the Purchaser shall attempt to agree in writing the item or items disputed by the Sellers and any other item or items which, following receipt of notice of the items disputed by the Sellers, the Purchaser notifies the Sellers that it wishes to adjust. If such item or items are not

agreed in writing between the Sellers and the Purchaser within 20 Business Days of the delivery to the Sellers of the relevant Draft Profit and Loss Account, the item or items in dispute shall be determined by the Independent Accountants, whose terms of reference shall be to determine the amount of the item or items in dispute (taking into account the provisions of this agreement relating to the form and content of the Profit and Loss Account and calculation of the Earn-out Consideration by reference to the Gross Revenues and the EBIT Margin for the relevant Earn-out Period) within 25 Business Days of receipt of notice pursuant to this paragraph.

The Draft Profit and Loss Account, adjusted to reflect the item or items as agreed between the Sellers and the Purchaser in writing in accordance with this paragraph or as determined by the Independent Accountants, shall constitute the Profit and Loss Account for the relevant Earn-out Period for the purposes of this agreement and the Gross Revenues and the EBIT Margin for that period shall be as stated in that Profit and Loss Account.

4. Provision of information

The Sellers shall and shall procure that the Sellers' Accountants shall provide the Purchaser and the Purchaser's Accountants with all information, assistance and access to books and records of account, documents, files and papers and information stored electronically which they reasonably require for the purposes of this schedule. The Purchaser shall and shall procure that the Company and that the Purchaser's Accountants shall provide the Sellers and the Sellers' Accountants with all information, assistance and access to stock, books and records of account, documents, files, papers and information stored electronically which they may reasonably require for the purposes of this schedule.

Part B. Proforma Profit and Loss Account

	£
Gross Revenues	X
Cost of goods sold	(X)
Operating expenses	(X)
Operating profit	X
Adjustments	X
EBIT	X
EBIT Margin	Y%
Earn-out consideration for the period	£Z

**Part C. Specific policies for preparation of the
Draft Profit And Loss Account**

1. In determining Gross Revenues or EBIT in respect of either Earn-out Period, no changes shall be made to the Accounts as at 31st March, 2000.
2. Any dividends arising from, or profit on disposal of, or any loss on sale or write down in the carrying value of the investment in Blue Square Shares shall be excluded from the calculation of EBIT.
3. The value of any intangible fixed assets shall be stated at zero.
4. Gross Revenues shall represent revenue received or receivable by Company for goods and services provided in the ordinary course of business, net of trade discounts and credit notes, value added tax and other sales-related taxes.

Revenue for the provision of software licences, development services and support services shall be recognised as follows:

- for development projects with or without associated product sales, see appendix C;
- for "time and materials" work, see appendix D;
- for product sales and licences where there is no development contract, revenue shall be recognised on delivery to the customer in accordance with a contract, firm purchase order, letter of engagement or other unconditional commitment on the part of the customer in place at the end of the relevant Earn-out Period or other evidence to the satisfaction of the Purchaser's Accountants as to sufficient detail on applicable terms and conditions; and
- support and maintenance revenue shall be recognised evenly over the period of the relevant contract.

In any instance where revenue recognition depends on acceptance by a customer, such acceptance by the customer shall be determined by reference to the terms of the relevant contract or purchase order.

5. In any instance where a software licence is granted to a customer and development work is performed for that customer but no support contract is entered into with the customer (treating a contract as having been entered into in accordance with paragraph 4 of Part C of Schedule 7) within 60 days after the end of the relevant Earn-out Period, a warranty provision of 10% of the revenue recognised shall be made. Any unused element of this provision shall be released 12 months following the final acceptance by the customer of the work performed or on the expiry of any warranty period specified in the relevant contract. Appropriate further provision shall be made for any disputes with customers, if evidenced in writing. Where a subsequent support contract is entered into, the provision shall be released with effect from the date when the support obligation takes effect.
6. Provision shall be made for any bad or doubtful debts as at the end of the relevant Earn-out Period. Any debt more than 90 days past due shall be provided for to the extent of 25% of its value, any debt more than 120 days past due shall be provided for to the extent of 50% of its value and any debt more than 180 days past due shall be provided for in full. In determining these provisions, amounts in respect of UK VAT shall be disregarded. For the avoidance of doubt, no provision shall be made in respect of any debt which is paid prior to the expiry of

the period of 60 days after the end of the relevant Earn-out Period. Similarly, any debt which conclusively proves to be bad during such period shall be written-off in full.

7. Provision shall be made for all amounts due or expected to be due to any of the Sellers or other employees in respect of remuneration and benefits referable to the relevant period, calculated in accordance with GAAP (but only to the extent such amounts are consistent with the provisions of the schedule headed "Earn-out Period"). Any entitlement to remuneration or benefits which is waived by any Seller or other employee shall be disregarded for the purposes of determining EBIT.
8. To the extent that any finance charges arise on (a) the purchase of assets under finance leases, (b) the provision to customers of extended credit terms, or (c) the sale of any trade receivables at a discount to a third party, such finance charges shall be included within operating expenses for the purposes of determining EBIT (but only to the extent such charges are consistent with the provisions of the schedule headed "Earn-out Period").
9. Any external costs borne by any member of the Purchaser's Group on behalf of the Company shall be a charge to the Company in determining EBIT (but only to the extent such a charge is consistent with the provisions of the schedule headed "Earn-out Period").
10. Any income or expenditure of the EBT shall be disregarded. In respect of the First Earn-out Period a charge of £215,081 shall be made in respect of Employer's National Insurance that may become payable on the distribution of the assets of the EBT. Any additional National Insurance relating to the EBT during any Earn-out Period shall be disregarded for the purposes of calculating EBIT. No account shall be taken of the profit and loss account charges of any contributions to, or issue of shares to, the EBT or any appointments into sub-funds within the EBT or appointments out of the EBT or similar events.

SCHEDULE 9**EARN-OUT PERIOD**

1. The Purchaser acknowledges that the Sellers' entitlement to the Earn-out Consideration could be adversely affected by certain events under the control of the Purchaser. During the period from Completion to the end of the Earn-out Period, the Purchaser shall not take any reasonably avoidable action which it is aware, or should reasonably be aware, will have an adverse effect on the Sellers' entitlement to the Earn-out Consideration.
2. In particular, the Purchaser shall not, before the end of the Earn-out Period, without the prior written consent of the Sellers:
 - (a) initiate any procedure for the solvent winding up of the Company; or
 - (b) procure the Company to sell or transfer any material part of its business or to purchase any business or company; or
 - (c) procure any material change to be made in the nature of the Company's business, as conducted at Completion;
 - (d) procure the Company to enter into any joint venture, partnership or other similar profit sharing arrangement;
 - (e) procure any business or opportunities of the Company to be diverted away from the Company to any member of the Purchaser's Group;
 - (f) deprive the Company of working capital which (having regard to the banking and other financial facilities for the time being available to the Company) is necessary for its requirements;
 - (g) procure the Company to enter into any transaction, agreement or arrangement with any member of the Purchaser's Group on terms which are less favourable to the Company than would be available from a third party at arm's length;
 - (h) procure the Company to terminate the Service Agreement of any Seller unless agreed by the relevant Seller or in circumstances where that Seller would be a Bad Leaver; or
 - (i) procure the Company to employ or agree to employ any person if the effect of its so doing would be materially to increase the Company's budgeted salary costs for the relevant Earn-out Period (being £2.4 million for the First Period and £5.6 million for the Second Period).
3. Notwithstanding paragraphs 1 and 2 above, the Purchaser may procure the Company, without the prior written consent of the Sellers, to do any of the following things which, but for this provision, would or might have an adverse effect on the Sellers' entitlement to the Earn-out Consideration:
 - (a) altering the terms and conditions of employment applicable to the Company's employees to the extent that they are materially inconsistent so as to reflect the relevant remuneration and employee benefits policies of the Purchaser's Group;
 - (b) introducing such financial, human resources, management and administrative controls and procedures as it considers appropriate;

- (c) providing appropriate financial, human resources, management and administrative support and assistance to the Company;
- (d) providing working capital or other financial facilities to the Company; and
- (e) procuring the Company to enter into any transaction, agreement or arrangement with any member of the Purchaser's Group on terms which are less favourable to the Company than would be available from a third party at arm's length

if, before it does so, it confirms in writing to the Sellers that, for the purposes of calculating the Earn-out Consideration, an appropriate allowance or adjustment will be made in respect of the thing in question, so that the Sellers' entitlement to the Earn-out Consideration is not adversely affected by that thing. Any such allowance or adjustment shall be identified and quantified by the Purchaser in the relevant Draft Profit and Loss Account and shall be agreed or determined as provided in the schedule headed "Profit and Loss Accounts" (including, for the avoidance of doubt, by reference to the Independent Accountants, if necessary).

4. Notwithstanding the above provisions of this schedule, the Purchaser may at any time dispose of the Company without the prior written consent of the Sellers, but in the event that the Company ceases to be a subsidiary of the Purchaser's Group as a result of such disposal the Earn-out Consideration for any Earn-out Period during which, or subsequent to, the date on which such a disposal occurs shall be deemed to be the maximum amount which might be payable.

SCHEDULE 10

CONTINGENT CONSIDERATION

1. Disposal of Blue Square Shares

- (1) For the purposes of determining any entitlement to the Contingent Consideration, the Company shall be taken to dispose (or be deemed to dispose) of the Blue Square Shares only in the following circumstances, and for net proceeds determined as set out below:
- (a) if it realises them for cash, in which case the net proceeds shall be the actual proceeds, (plus all dividends received in respect of them after Completion) less all associated taxation and external costs of disposal; or
 - (b) if it receives a *bona fide* unconditional offer to realise them for cash, but elects to decline that offer, in which case the net proceeds shall be deemed to be a sum equal to the cash offer price (plus all dividends received in respect of them after Completion), less a sum equal to all taxation which would be incurred by the Company on a sale at that price provided that:
 - (i) the Sellers may elect (at their sole discretion), by notice in writing to the Purchaser given at any time within 10 Business Days of their being notified that such an offer has been declined, that such event shall not constitute a deemed disposal for the purposes of this schedule; and
 - (ii) if they so elect, the provisions of this schedule shall continue to apply in relation to any further disposal (or deemed disposal) of the Blue Square Shares;or
 - (c) if the Blue Square Shares are admitted to listing or trading on any Recognised Exchange (without being realised by the Company for cash at that time) then:
 - (i) if the Blue Square Shares are not subject to any restriction on the Company's ability to realise them for a particular period, the Company shall be deemed to have disposed of the Blue Square Shares on the occasion of their admission to listing or trading and the net proceeds shall be deemed to be the value of the Blue Square Shares at a price per share equal to the price at which shares of the same class are generally offered or sold to the public on that occasion (plus all dividends received in respect of them after Completion), less a sum equal to all taxation which would be incurred by the Company on a sale at that price; or
 - (ii) if the Blue Square Shares are subject to any restriction on the Company's ability to realise them for a particular period following that occasion, the Company shall be deemed to have disposed of the Blue Square Shares on the occasion of their admission to listing or trading and the net proceeds shall be deemed to be the value of the Blue Square Shares at a price per share equal to the closing market price of Blue Square Shares on the first Business Day after the period of such restriction expires (plus all dividends received in respect of them after Completion), less a sum equal to all taxation which would be incurred by the Company on a sale at that price; or

- (d) if, as a result of any takeover or similar transaction, the Company receives in exchange for the Blue Square Shares any securities which are admitted to listing or trading on any Recognised Exchange ("**Exchange Securities**") then:
- (i) if the Company realises the Exchange Securities for cash within ten Business Days of the date of exchange, it shall be deemed to have disposed of the Blue Square Shares for such amount as it so realises (plus all dividends received in respect of them after Completion), less a sum equal to all taxation for which it is liable as a result of the exchange and realisation and external costs of disposal; or
 - (ii) if the Exchange Securities are subject to any restriction on the Company's ability to realise them for a particular period, the Company shall be deemed to have disposed of the Blue Square Shares on the date of exchange and the net proceeds shall be deemed to be the value of the Exchange Securities at a price per unit equal to the closing market price of Exchange Securities of the same class on the first Business Day after the period of such restriction expires (plus all dividends received in respect of them after Completion), less a sum equal to all taxation which would be incurred by the Company on a sale of the Exchange Securities at that price;
 - (iii) in any other case, the Company shall be deemed to have disposed of the Blue Square Shares on the date on which it receives the Exchange Securities and the net proceeds shall be deemed to be the value of the Exchange Securities at a price per unit equal to the closing market price of Exchange Securities of the same class on that date (plus all dividends received in respect of them after Completion), less a sum equal to all taxation which would be incurred by the Company on a sale of the Exchange Securities at that price; or
- (e) if as a result of an offer by Blue Square Limited to its shareholders to purchase its own shares, a scheme of arrangement, reconstruction, demerger or other corporate reorganisation or sale of undertaking or any similar transaction, cash is realised by the Company in respect of the Blue Square Shares (including, for the avoidance of doubt, by way of a dividend of any proceeds of sale of the undertaking and assets of Blue Square Limited), in which case the net proceeds shall be deemed to be a sum equal to the actual amount realised, less a sum equal to all associated taxation and external costs involved in the transaction; or
- (f) if it disposes of them by way of gift to any person (other than a member of the Purchaser's Group), in which case the net proceeds shall be deemed to be a sum equal to the market value of the Blue Square Shares at the date of deemed disposal (plus all dividends received in respect of them after Completion), such market value to be as determined by the Independent Accountants.
- (2) In computing any actual or notional liability to taxation for these purposes no account shall be taken of any actual or potential reduction in such liability by virtue of losses or other relief becoming available to the Company after Completion (whether by surrender by a member of the Purchaser's Group or otherwise). In respect of any dividends received in respect of the Blue Square Shares after Completion, the amount brought into account for the purposes of this clause shall be after deduction of all liability to taxation.
- (3) Notwithstanding the provisions of paragraph (1)(e) above, if, as a result of any takeover, reconstruction, demerger, corporate reorganisation or similar transaction, the Company receives in exchange for the Blue Square Shares any securities of another company (other

than Blue Square Limited) which are not admitted to listing or trading on any Recognised Exchange, that shall not be deemed to be a disposal of the Blue Square Shares but references in this agreement to a disposal or deemed disposal of the Blue Square Shares shall then be construed as references to such securities.

- (4) Any value receivable by the Company or any member of the Purchaser's Group from any person under any disposal or transaction related to any disposal (or deemed disposal) by the Company of the Blue Square Shares may be added to the actual net proceeds of the disposal (or deemed disposal) of the Blue Square Shares to the extent that it does not represent fair and reasonable consideration for the subject matter of the related transaction, viewed independently.
- (5) Notwithstanding the provisions of paragraph (1)(f) above, if the Company transfers the Blue Square Shares to the Purchaser or any other member of the Purchaser's Group, no disposal shall be deemed to have occurred but the provisions of this schedule shall continue to apply as though references to the Company were references to the transferee company.

2. Notice of disposal

The Purchaser shall procure that the Company informs the Sellers in writing of any disposal (or deemed disposal) by the Company of the Blue Square Shares, or any election to decline any offer for the Blue Square Shares, and provides to the Sellers such information about the relevant transaction as the Sellers may reasonably require, including any information concerning any related transaction.

3. Preparation of draft Contingent Consideration Statement

Promptly after any disposal (or deemed disposal) occurs the Purchaser shall instruct the Purchaser's Accountants to determine the amount of the Contingent Consideration and to prepare and deliver to the Sellers a draft statement setting out the Contingent Consideration due to the Sellers (the "draft Contingent Consideration Statement").

4. Notification of disputed items

Within 20 Business Days of delivery of the draft Contingent Consideration Statement to the Sellers the Sellers shall notify to the Purchaser in writing any item or items they wish to dispute together with the reasons for such dispute and a list of proposed adjustments. If, by the expiry of such period of 20 Business Days, no such notice is received by the Purchaser, then the draft Contingent Consideration Statement and the amount of the Contingent Consideration stated in it shall be final and binding on the parties.

5. Reference to Independent Accountants

If notice is received by the Purchaser as to any item in dispute under this clause, the Sellers and the Purchaser shall attempt to agree in writing the item or items disputed by the Sellers. If such item or items are not agreed in writing between the Sellers and the Purchaser within 40 Business Days of the delivery to the Sellers of the draft Contingent Consideration Statement, the item or items in dispute shall be determined by the Independent Accountants whose terms of reference shall be to determine the amount of the item or items in dispute within 25 Business Days of receipt of notice pursuant to this clause. The amount of the Contingent Consideration stated in the Draft Contingent Consideration Statement, adjusted to reflect the item or items as agreed between the Sellers and the Purchaser in writing in accordance with this subclause or as determined by the Independent Accountants, shall be final and binding on the parties.

SCHEDULE 11

INTERPRETATION

1. In this agreement:

"Accounts" means the audited balance sheet as at the Accounts Date and audited profit and loss account for the year ended on that date of the Company and the notes and directors' reports relating to them, a copy of which has been initialled for the purpose of identification by the Sellers' Solicitors and the Purchaser's Solicitors;

"Accounts Date" means 31st March, 2000;

"Agreed Form" means, in relation to any document, the form of that document which has been initialled for the purpose of identification by the Sellers' Solicitors and the Purchaser's Solicitors;

"Bad Leaver" means a Seller who ceases to be an employee of the Company or a member of the Purchaser's Group and whose cessation of employment occurs:

- (a) as a result of his resignation, except in circumstances where he is constructively dismissed; or
- (b) as a result of his dismissal in circumstances where his employer is entitled under the terms of his Service Agreement or his terms of employment to dismiss him by reason of:
 - (i) gross misconduct or a serious breach of his obligations under the terms of his Service Agreement or his terms of employment; or
 - (ii) any repeated breach of his obligations under the terms of his Service Agreement or his terms of employment (after having received a written warning); or
 - (iii) any other misconduct, including conviction for an arrestable offence (other than a road traffic offence for which a non-custodial penalty is imposed), which materially and adversely affects the interests of the Company or any member of the Purchaser's Group; or
- (c) in circumstances where he has committed a material breach of his obligations under the clause headed "Protective Covenants";

"Base Consideration" means that part of the Consideration as is payable in accordance with the provisions of the clause headed "Base Consideration";

"Blue Square Shares" means the 5,000 B ordinary shares of £1 each in Blue Square Limited (registered number 3796653) owned by the Company (or any other shares or other securities in Blue Square Limited for the time being representing or derived from those shares, whether by way of consolidation, sub-division, capitalisation or other reorganisation of capital) and any additional securities in Blue Square Limited acquired for cash by way of rights or other similar issue;

"Business Day" means a day (other than a Saturday or Sunday) on which banks are generally open in London for normal business;

"Companies" means the Company and OBSL;

"Completion" means completion of the sale and purchase of the Shares in accordance with this agreement;

"Completion Accounts" means the Completion Accounts to be prepared in accordance with the schedule headed "Completion Accounts";

"Consideration" means the total consideration payable in respect of the Shares under this agreement;

"Consideration Shares" means those NDS Shares to be issued to the Sellers in satisfaction of part of the Consideration;

"Contingent Consideration" means that part of the Consideration as may be payable in accordance with the provisions of the clause headed "Contingent Consideration";

"Depository" means The Bank of New York (or its successor) as depository under the Deposit Agreement dated 26th November, 1999 between, among others, the Purchaser and the Depository;

"Disclosure Letter" means the letter of the same date as this agreement from the Sellers to the Purchaser;

"Earn-out Consideration" means that part of the Consideration as may be payable in accordance with the provisions of the clause headed "Earn-out Consideration";

"Earn-out Period" means the First Period and the Second Period or either of them;

"EBIT" means, in respect of an Earn-out Period, the earnings of the Company before interest and tax excluding any exceptional or extraordinary items and any profit or gain attributable to the Blue Square Shares (but including depreciation and amortisation) for that period, as adjusted and ascertained in accordance with the provisions of the schedule headed Profit and Loss Accounts;

"EBIT Margin" means, in respect of an Earn-out Period, the EBIT for that period divided by the Gross Revenues for the same period and multiplied by 100, as adjusted and ascertained in accordance with the provisions of the schedule headed Profit and Loss Accounts;

"EBT" means the Orbis Technology Limited Employee Benefit Trust 2000 constituted by a Declaration of Trust dated 5th April, 2000;

"EBT Trustee" means Walbrook Trustees (Guernsey) Limited (being one of the Sellers) in its capacity as trustee of the EBT;

"Encumbrance" means any mortgage, charge (fixed or floating), pledge, lien, option, right to acquire, right of pre-emption, assignment by way of security, trust arrangement for the purpose of providing security or any other security interest of any kind, including retention arrangements, lease, credit sale, hire purchase or other agreement for payment on deferred terms, and any agreement to create any of the foregoing;

"Exchange Act" means the US Securities and Exchange Act of 1934;

"Executives" means James Caddy, Charles Malir, Clive Haworth, Christopher Hall and Kevin Emany;

"First Period" means the financial period which began on 1st April, 2000 and ends on 31st March, 2001;

"GAAP" means generally accepted accounting principles and practices in the United Kingdom;

"Gross Revenues" means, in respect of an Earn-out Period, the gross revenues of the Company for that period, as adjusted and ascertained in accordance with the provisions of the schedule headed "Profit and Loss Accounts";

"Independent Accountants" means such firm of chartered accountants as may from time to time be appointed pursuant to the clause headed "Independent Accountants";

"Insolvency Act" means Insolvency Act 1986;

"Issue Price" means £46.7414 per NDS Share (subject to adjustment as provided in this agreement);

"KE" means Kevin James Ali Emany (being one of the Sellers);

"KE Trust" means the Kevin James Ali Emany Life Settlement Trust constituted by a deed of settlement for life dated 29th November, 2000;

"KE Trustees" means Kevin James Ali Emany and James Mathew Caddy in their capacity as trustees of the KE Trust;

"NDS Shares" means Series A ordinary shares of US\$0.01 each in the capital of the Purchaser or American Depositary Shares representing such shares;

"Net Assets" means the aggregate amount of the assets less the aggregate amount of the liabilities of the Company as at the close of business on the date of Completion as shown in the Completion Accounts;

"OBSL" means OpenBet Software Limited;

"Ordinary Shares" means all the issued A, B, C, D, E and F shares of 0.01p each in the capital of the Company;

"Purchaser's Accountants" means Arthur Andersen of 1 Surrey Street, London, WC2R 2PS;

"Purchaser's Group" means the Purchaser, any holding company for the time being of the Purchaser and any subsidiary of the Purchaser or of such holding company (other than the Companies) from time to time;

"Purchaser's Solicitors" means Allen & Overy of One New Change, London EC4M 9QQ;

"Recognised Exchange" means any investment exchange specified in Part 1 of Schedule 1, or in Schedule 2, to the Financial Services Act 1986 (Investment Advertisements) (Exemptions) (No. 2) Order 1995;

"Restricted Shares" has the meaning assigned to it in the clause headed "Base Consideration";

"Second Period" means the financial period which begins on 1st April, 2001 and ends on 31st March, 2002;

"Securities Act" means the US Securities Act of 1933;

"Seller" includes the estate and personal representatives of a Seller;

"Sellers' Accountants" means Mazars Neville Russell of Raffety House, 2-4 Sutton Court Road, Sutton, Surrey SM1 4TN;

"Sellers' Solicitors" means DLA of Fountain Precinct, Balm Green, Sheffield S1 1RZ;

"Series A Note Instrument" means the Instrument in the Agreed Form constituting the Series A Notes;

"Series A Notes" means the Floating Rate Guaranteed Loan Notes 2001/2004 to be issued by the Purchaser and to be constituted by the Series A Note Instrument;

"Series B Note Instrument" means the Instrument in the Agreed Form constituting the Series B Notes;

"Series B Notes" means the Floating Rate Loan Notes to be issued by the Purchaser and to be constituted by the Series B Note Instrument;

"Service Agreements" means the Service Agreements in the Agreed Form;

"Shares" means all the Ordinary Shares and the Z Shares;

"subsidiary" means a subsidiary for the purposes of the Companies Act 1985;

"TCGA 1992" means Taxation of Chargeable Gains Act 1992;

"Tax Deed" means the Tax Deed in the Agreed Form;

"Tax Warranty Claim" means a claim by the Purchaser or any person deriving title from it for any breach or alleged breach of those Warranties set out in Part D (Taxation) of the schedule headed "Warranties";

"Taxes Act 1988" means Income and Corporation Taxes Act 1988;

"United States" or "US" means the United States of America, its territories and possessions;

"VATA 1994" means the Value Added Tax Act 1994;

"Warranties" means the warranties on the part of the Sellers contained in the clause headed "Warranties";

"Warranty Claim" means a claim by the Purchaser or any person deriving title from it for any breach or alleged breach of any of the Warranties;

"Z Shares" means all the issued AZ, BZ, CZ, DZ, EZ and FZ shares of 0.01p each in the capital of the Company; and

a person shall be deemed to be **connected** with another if that person is connected with another within the meaning of section 839 of the Taxes Act 1988.

2. Where any statement in the Schedule headed "Warranties" or in the Disclosure Letter is qualified by the expression "so far as the Sellers are aware" or "to the best of the Sellers' knowledge, information and belief" or any similar expression, that statement shall be deemed to include an additional statement that it has been made after making all such enquiries as are reasonable the circumstances.
3. In this agreement any reference, express or implied, to an enactment (which includes any legislation in any jurisdiction) includes references to:
 - (a) that enactment as amended, extended or applied by or under any other enactment (before or after signature of this agreement);
 - (b) any enactment which that enactment re-enacts (with or without modification); and
 - (c) any subordinate legislation made (before or after signature of this agreement) under that enactment, as re-enacted, amended, extended or applied as described in paragraph (a) above, or under any enactment referred to in paragraph (b) above.
4. In this agreement:
 - (a) words denoting persons shall include bodies corporate and unincorporated associations of persons; and
 - (b) subject to the clause headed "Assignments", references to a party to this agreement include references to the successors or assigns (immediate or otherwise) of that party.

Signed by Charles Andrew Stewart Malir

Charles Malir

Signed by James Mathew Caddy

J. M. Caddy

Signed by Clive Haworth

C. Haworth

Signed by Christopher Hall

C. J. Hall

Signed by Kevin James Ali Emamy

K. J. Emamy

Signed by Kevin James Ali Emamy
and James Mathew Caddy as trustees
of the KE Trust

K. J. Emamy
J. M. Caddy

Signed by
for Walbrook Trustees (Guernsey)
Limited

[Signature]

Signed by **A. PELED**
for NDS Group plc

Signed by Charles Andrew Stewart Malir

.....

Signed by James Mathew Caddy

.....

Signed by Clive Haworth

.....

Signed by Christopher Hall

.....

Signed by Kevin James Ali Emamy

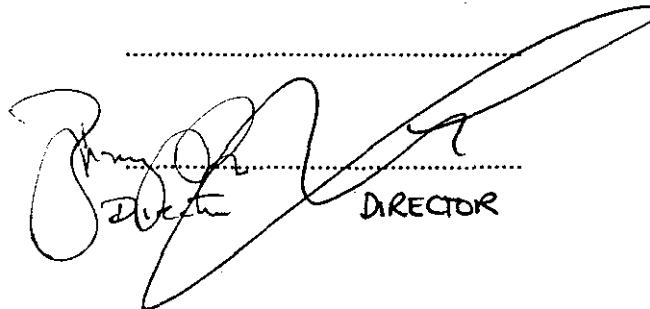
.....

Signed by Kevin James Ali Emamy
and James Mathew Caddy as trustees
of the KE Trust

.....

.....

Signed by
for Walbrook Trustees (Guernsey)
Limited

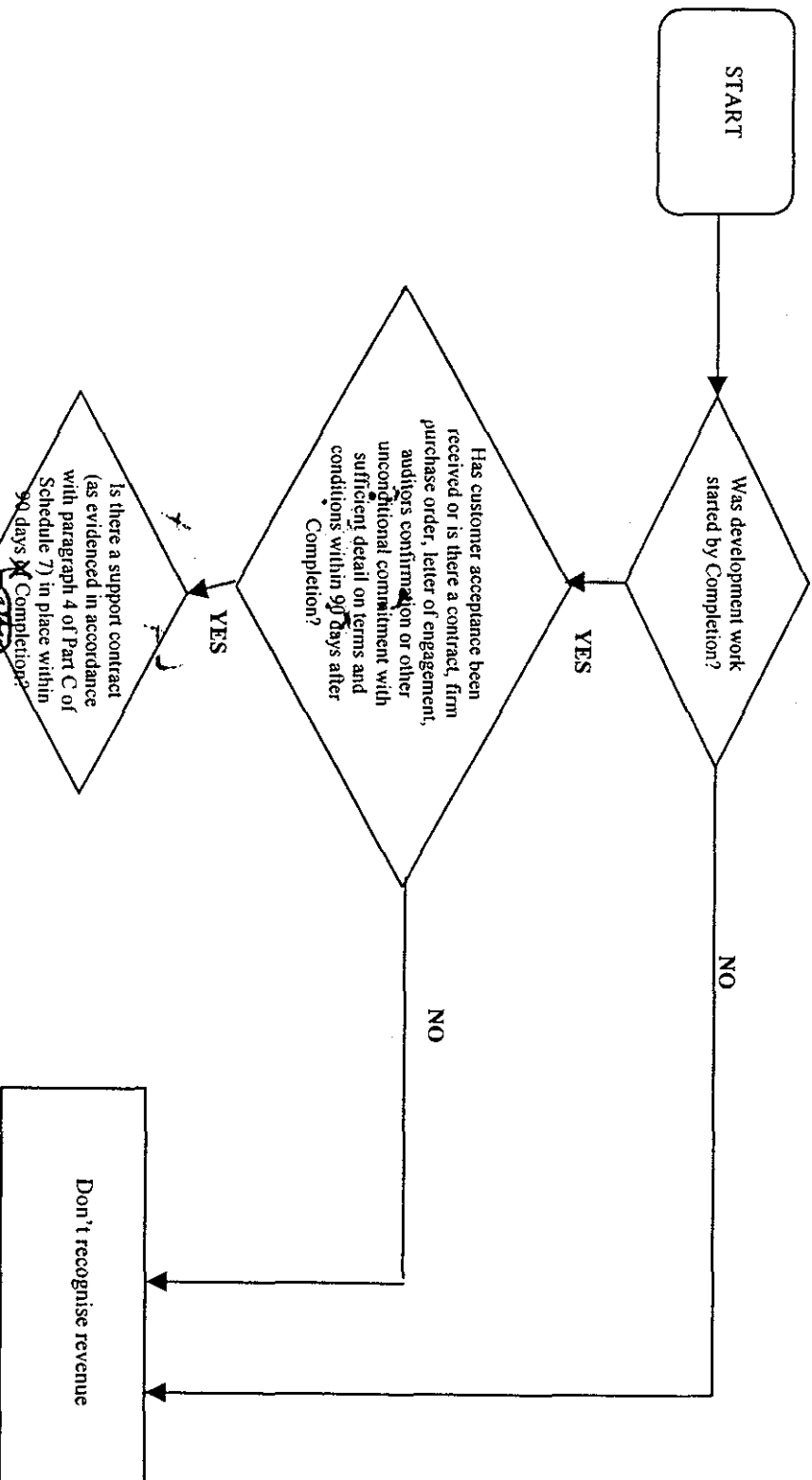

DIRECTOR

Signed by
for NDS Group plc

.....

APPENDIX A

REVENUE RECOGNITION POLICY FOR DEVELOPMENT PROJECTS WITH OR WITHOUT ASSOCIATED PRODUCT SALE (COMPLETION ACCOUNTS)



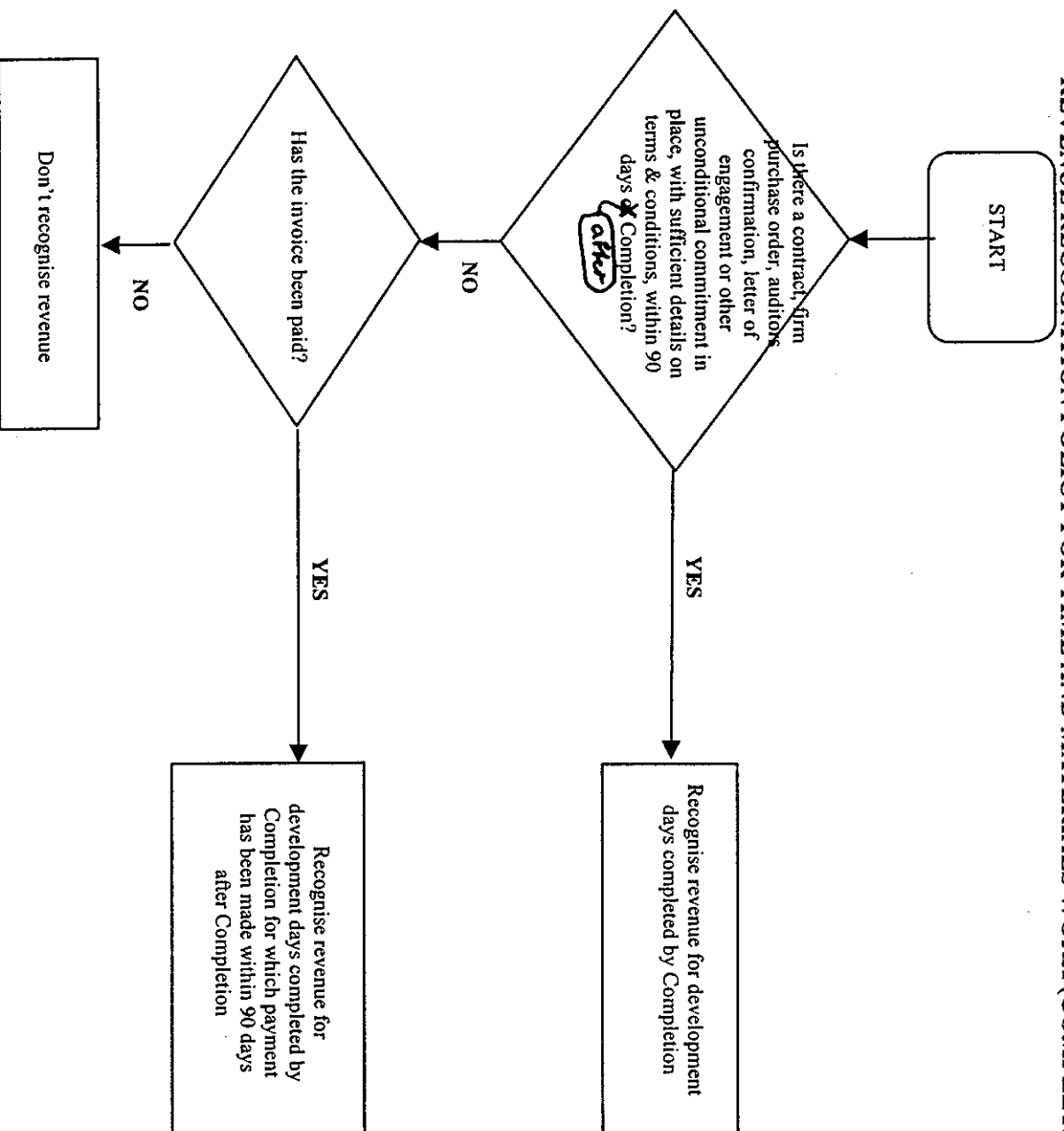
Recognise all of shipped licences plus the proportion of the development work completed at Completion

Recognise all of shipped licences plus the proportion of the development work completed at Completion less a warranty provision of 10% of recognised revenue.

Don't recognise revenue

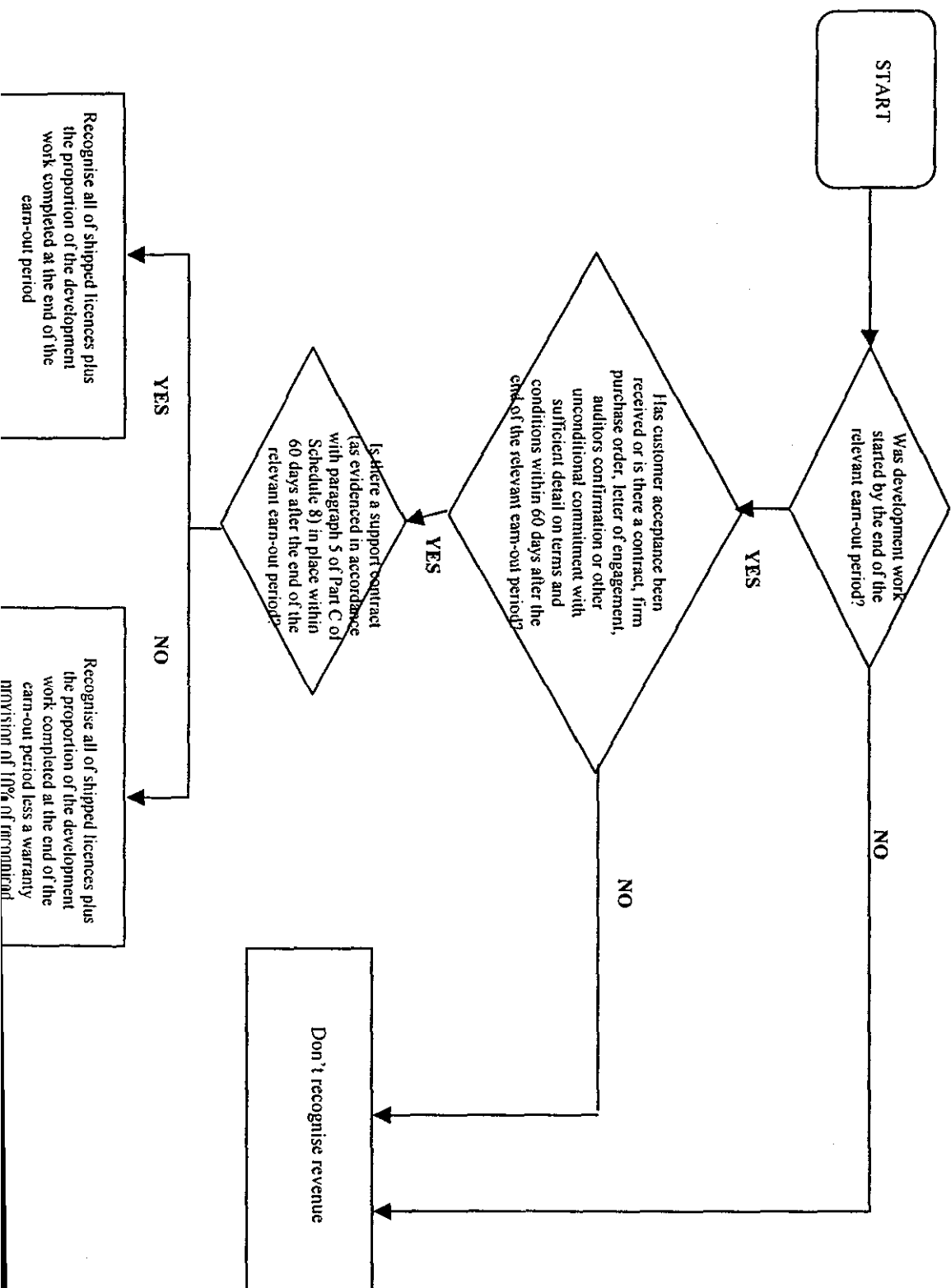
APPENDIX B

REVENUE RECOGNITION POLICY FOR TIME AND MATERIALS WORK (COMPLETION ACCOUNTS)



APPENDIX C

REVENUE RECOGNITION POLICY FOR DEVELOPMENT PROJECTS WITH OR WITHOUT ASSOCIATED PRODUCT SALE (EARN-OUT)



APPENDIX D

REVENUE RECOGNITION POLICY FOR TIME AND MATERIALS WORK (EARN-OUT)

