

DATED

4 December

1995

2008246

Headway Technology Group Plc and Another

(1)

- and -

Acal plc

(2)

- and -

Headway Holdings Limited

(3)

PASSED FOR FILING

AGREEMENT

- relating to -

the sale and purchase of the
entire issued and to be issued share capital of
Instar Enterprises Limited

WE HEREBY CERTIFY THAT
THIS IS A TRUE COPY OF THE
ORIGINAL

.....*Lovell White Durrant*.....
LOVELL WHITE DURRANT
65 HOLBORN VIADUCT
LONDON EC1A 2DY

A2/AMB/AMJ

14.2.96

LOVELL WHITE DURRANT
65 Holborn Viaduct
London EC1A 2DY

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SHARE PURCHASE AGREEMENT

THIS AGREEMENT dated the 4th day of December 1995.

BETWEEN:

- (1) **Headway Technology Group Plc** a company registered in England under number 2850904 whose registered office is at Headway House, Crosby Way, Farnham, Surrey GU9 7XG (the "Vendor") and **Paul Coleman** of Millbrook, The Warren, East Horsley, Leatherhead, Surrey KT24 5RH ("Mr Coleman");
- (2) **Acal plc** a company registered in England under number 2008246 whose registered office is at Acal House, Guildford Road, Lightwater, Surrey GU18 5SA (the "Purchaser"); and
- (3) **Headway Holdings Limited** a company registered in England under number 1173364 whose registered office is at Headway House, as aforesaid (the "Guarantor").

RECITALS:

- (A) **Instar Enterprises Limited** (the "Company") is a company limited by shares incorporated under the Companies Act 1985 registered in England under number 3130010 whose registered office is at Headway House, as aforesaid.

At the date hereof it has an authorised share capital of £1,000 divided into 1,000 Ordinary Shares of £1 each, two of which have been allotted and issued and are fully paid.

- (B) Mr Coleman is the beneficial owner and registered holder of all the Shares. Details of the Shares are set out in Schedule I.
- (C) Particulars of the Company are set out in Schedule II.
- (D) Mr Coleman and the Vendor have agreed to sell and the Purchaser has agreed to purchase all the Shares and the Additional Shares in the capital of the Company on and subject to the terms of this Agreement.

OPERATIVE TERMS

1. Interpretation

1.1 In this Agreement, its Recitals and Schedules:

"Additional Shares"

means the 205,000 ordinary shares of £1 each and the Preference Share in the capital of the Company to be issued and allotted to the Vendor, credited as fully paid, upon completion of the Business Purchase Agreement and sold by the Vendor to the Purchaser pursuant to this Agreement, described in column 3 of Schedule I;

"Admission"

means the admission by the Council of The Stock Exchange of the Consideration Shares to the Official List, subject to allotment, and such admission becoming effective in accordance with the Listing Rules made pursuant to Part IV of the Financial Services Act 1986;

"Business"

means all of the business consisting of the distribution of document imaging peripheral equipment and accessories (including software) as carried on by the Vendor immediately prior to the completion of the Business Purchase Agreement;

"Business Purchase Agreement"

means the agreement to be entered into between the Vendor (1), the Company (2) and the Guarantor (3) relating to the sale and purchase of the Business and such documents to be entered into on completion of that agreement, each such document being in the agreed terms;

"Business Day"

means any day except Saturdays and Sundays on which banks in the City of London are open for business;

"CAA"

means the Capital Allowances Act 1990;

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| "CGTA" | means the Capital Gains Tax Act 1979; |
| "Company" | has the meaning given in Recital (A); |
| "Completion" | means completion of the sale and purchase of the Shares and the Additional Shares pursuant to this Agreement in accordance with its terms; |
| "Completion Date" | means the date on which the last of the conditions set out in clause 2 is satisfied or waived; |
| "Consideration Shares" | means the ordinary shares of 5p each in the capital of the Purchaser (credited as fully paid) referred to in clause 4; |
| "Deed of Indemnity" | means the deed of covenant between the Vendor, the Company, the Guarantor and the Purchaser to be delivered on Completion, in the agreed terms; |
| "Deferred Consideration" | means the consideration payable by the Purchaser to the Vendor in accordance with clause 4.3 and Schedule V; |
| "Disclosure Letter" | means the letter of the same date as this Agreement containing disclosures in respect of the Warranties from the Vendor to and countersigned by the Purchaser; |
| "FA" | means Finance Act; |
| "General Warranties" | means those Warranties set out in Schedule III; |
| "ICTA 1970" | means the Income and Corporation Taxes Act 1970; |
| "ICTA 1988" | means the Income and Corporation Taxes Act 1988; |

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| "Initial Consideration" | means the consideration payable by the Purchaser to the Vendor and Mr Coleman upon Completion as provided in clause 4.2; |
| "Lease" | means the lease relating to the Property between the Vendor and the Company to be entered into upon completion of the Business Purchase Agreement; |
| "material" | means of such significance to a reasonable purchaser of the Company for the consideration and on the terms of this Agreement that it would reasonably be expected to seek a reduction in the consideration payable; |
| "Placing Agreement" | the conditional placing agreement of even date herewith between Albert E Sharp (1) and the Purchaser (2) relating to the placing of the Consideration Shares; |
| "Preference Share" | means the preference share of £1,500,000 in the capital of the Company to be allotted to the Vendor, credited as fully paid, upon completion of the Business Purchase Agreement and sold by the Vendor to the Purchaser pursuant to this Agreement; |
| "Property" | means the leasehold property known as part of Headway House, Crosby Way, Farnham, Surrey comprised in a lease to be entered into on completion of the Business Purchase Agreement between the Vendor and the Company; |
| "Purchaser's Accountants" | means KPMG; |
| "Purchaser's Group" | means the Purchaser and its Subsidiary Undertakings; |
| "Purchaser's Solicitors" | means Lovell White Durrant of 65 Holborn Viaduct, London EC1A 2DY; |

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| "Retention" | means the amount to be retained out of the Initial Consideration payable to the Vendor pursuant to clause 6.5(b) and dealt with in accordance with clause 7; |
| "Shares" | means the issued shares in the capital of the Company described in column 2 of Schedule I; |
| "Stakeholders' Account" | means the account referred to in clause 7.1; |
| "The Stock Exchange" | means The International Stock Exchange of the United Kingdom and the Republic of Ireland Limited; |
| "Subsidiary Undertakings" | means the undertakings in respect of which the Purchaser or the Guarantor, as the case may be, is a parent undertaking; |
| "Tax Warranties" | means those Warranties set out in Schedule IV; |
| "TCGA" | means the Taxation of Chargeable Gains Act 1992; |
| "VATA" | means the Value Added Tax Act 1994; |
| "Vendor's Solicitors" | means Clarks of Great Western House, Station Road, Reading, Berkshire RG1 1SX; |
| "Warranties" | means the warranties, representations and undertakings set out in Schedules III and IV. |

- 1.2 Any reference in this Agreement to a document being "in the agreed terms" means that document in the terms agreed between the parties and for the purpose of identification signed by the Purchaser's Solicitors and the Vendor's Solicitors, or such other terms as may be agreed in writing between the parties in substitution therefor.

- 1.3 In this Agreement, references to any statutory provision shall include such provision as from time to time amended, whether before on or (in the case only of re-enactment or consolidation without substantive amendment) after the date hereof, and shall be deemed to include provisions of earlier legislation which have been re-enacted (with or without modification) or replaced (directly or indirectly) by such provision and shall further include all statutory instruments or orders from time to time made pursuant thereto prior to the date hereof.
- 1.4 Words and phrases defined in the Companies Act 1985 (excluding its Schedules) shall have the same meanings in this Agreement unless they are otherwise defined in this Agreement or unless the context or subject matter otherwise requires.
- 1.5 In this Agreement and its Schedules:
- (a) the masculine gender shall include the feminine and neuter and the singular number shall include the plural and vice versa;
 - (b) references to persons shall include individuals, bodies corporate, unincorporated associations and partnerships;
 - (c) the headings are inserted for convenience only and shall not affect the construction of this Agreement;
 - (d) references to Recitals, clauses and Schedules and sub-divisions thereof, unless a contrary intention appears, are to the Recitals and clauses of and Schedules to this Agreement and sub-divisions thereof respectively.
- 1.6 The Schedules and the Recitals form part of this Agreement and shall be construed and shall have the same full force and effect as if expressly set out in the body of this Agreement.
2. **Conditions**
- 2.1 Completion of this Agreement is conditional in all respects upon:
- (a) the Placing Agreement having become unconditional in all respects save only for the conditions contained in the Placing Agreement as to this Agreement becoming

unconditional and being completed and the admission of the Consideration Shares to the Official List of the London Stock Exchange;

- (b) Admission;
- (c) the Business Purchase Agreement having completed in accordance with its terms, save for Admission;
- (d) consent to the grant of the Lease being received from Barclays Bank PLC.

2.2 The Purchaser may waive all or any of the conditions specified in clause 2.1 at any time on or before 6 p.m. on 7 December 1995, but subject to such waiver shall use reasonable endeavours to ensure that the conditions are fulfilled as soon as practicable and in any event not later than 6 p.m. on 7 December 1995.

2.3 The parties shall use their respective reasonable endeavours to ensure that the conditions specified in clauses 2.1 are fulfilled as soon as practicable and in any event not later than 6 p.m. on 7 December 1995.

2.4 If all the conditions specified in clause 2.1 have not been satisfied or waived by 6 p.m. on 7 December 1995 then this Agreement shall have no further effect and (subject only to clauses 10 [Confidentiality] and 14 [Costs]) the parties shall be released from all obligations under it, but without prejudice to any rights or obligations which may thereby accrue or may already have accrued prior to such time and date.

3. Sale and purchase of shares

3.1 On and subject to the terms of this Agreement, Mr Coleman and the Vendor shall sell the Shares and the Additional Shares with full title guarantee and the Purchaser shall purchase all the Shares and the Additional Shares on and with effect from the Completion Date, free from all charges, liens, equities, encumbrances, claims or restrictions whatsoever and together with all rights attaching or accruing thereto and all dividends and distributions declared, made or paid thereon or in respect thereof on or after the date hereof.

- 3.2 The Purchaser shall not be obliged to complete the purchase of any of the Shares and the Additional Shares unless the sale to it of all the Shares and the Additional Shares is completed simultaneously and if either of Mr Coleman or the Vendor is unable to complete on the Completion Date then the Purchaser shall be entitled to rescind this Agreement without liability of any kind.

4. Consideration

- 4.1 The price payable to Mr Coleman and the Vendor by the Purchaser for the Shares and the Additional Shares shall be the aggregate of the Initial Consideration and the Deferred Consideration, subject always to a maximum of £5,000,000.
- 4.2 The Initial Consideration payable by the Purchaser to Mr Coleman and the Vendor shall be the sum of £3,000,000, allocated as indicated in Schedule I, of which £1 shall be allocated to the Preference Share, and which shall be satisfied by the allotment (credited as fully paid) of such number of new ordinary shares of 5p each in the capital of the Purchaser, the value of which (net of commissions and other expenses) on the basis of the offer price specified in the Placing Agreement is equal to £3,000,000, to be satisfied on Completion.
- 4.3 The Deferred Consideration shall be determined and paid in respect of the Preference Share and in accordance with the provisions of Schedule V PROVIDED THAT if the amount so determined produces a negative figure then no repayment shall be due to the Purchaser.

5. Pre-Completion matters

- 5.1 Pending Completion, Mr Coleman shall procure that the business of the Company is carried on in the ordinary and usual course in consultation with the Purchaser and that no transaction is carried out without the prior written consent of the Purchaser. In particular, but without prejudice to the generality of the foregoing, any of the following matters shall require the prior consent in writing of the Purchaser:
- (a) the modification of any of the rights attached to any shares in the Company and the creation or issue of any shares or the grant or agreement to grant any option over any shares or uncalled capital of the Company or the issue of any obligations convertible into shares;

- (b) the capitalisation or repayment of any amount standing to the credit of any reserve of the Company or the redemption or purchase of any shares or any other reorganisation of the share capital of the Company;
- (c) the admission of any person (other than a party to this Agreement) whether by subscription or transfer or transmission as a member of the Company;
- (d) the sale or disposal of, or the grant or termination of any rights in respect of, any part of the undertaking or the assets of the Company;
- (e) the declaration or payment by the Company of any dividend or other distribution;
- (f) any alteration to the Memorandum or Articles of Association of the Company;
- (g) the giving by the Company of any guarantee or indemnity;
- (h) the making of capital commitments by the Company;
- (i) the acquisition by the Company of any shares of any other company or the participation by the Company in any partnership or joint venture;
- (j) the borrowing of any money by the Company;
- (k) the creation or issue or allowing to come into being of any mortgage or charge upon any part of the property or assets or uncalled capital of the Company or the creation or issue of any debenture or debenture stock or the obtaining of any advance or credit in any form other than normal trade credit;
- (l) the appointment of any person as a director of the Company;
- (m) the dismissal or any change in the remuneration or terms of employment of any director or employee of the Company; or
- (n) the entry into, termination, amendment or variation of any contract, transaction or arrangement by the Company to which it is a party.

5.2 If at any time at or before Completion:

- (a) Mr Coleman fails to comply in any material respect with all or any of his material obligations (including without limitation the obligations requiring acts or things to be done or performed or procured to be done or performed on the Completion Date in accordance with clause 6); or
- (b) the Purchaser becomes aware of any fact or event (not being a fact or event provided for or contemplated by this Agreement) which in its reasonable opinion:
 - (i) is a material breach of or in any way materially inconsistent with any of the Warranties or would be a material breach of or materially inconsistent with any of the Warranties when repeated at Completion or would give rise to a claim under the Deed of Indemnity (if executed); or
 - (ii) is evidence that any Warranty is misleading in any material respect or that any material obligation of either Mr Coleman or the Vendor has not been or will not be complied with within the period required by this Agreement; or
 - (iii) would be likely to prevent or hinder the Company from having effective use and possession of or from disposing of any material part of its assets; orand in each case in the reasonable opinion of the Purchaser materially and adversely affects the value of the Shares or the Additional Shares or the manner in which the Company can carry on the Business; or
- (c) the Company sustains loss or damage on account of fire, flood, explosion, death, strike or any other cause (whether similar or not) which in the reasonable opinion of the Purchaser materially and adversely affects the value of the Shares or the Additional Shares or the manner in which the Company can carry on the Business;

then the Purchaser may, by written notice given by it or by the Purchaser's Solicitors to the Vendor or to the Vendor's Solicitors, elect:

- (d) to rescind this Agreement without prejudice to its remedies against Mr Coleman and/or the Vendor; or
 - (e) to fix (on one or more subsequent occasions) a new date for Completion, in which event the terms of this Agreement (including all the remedies available to the Purchaser) shall continue to apply as if the date for Completion so fixed was the date for Completion originally specified herein.
- 5.3 Not later than 3 days before Completion the Purchaser shall deliver to Mr Coleman and the Vendor renounceable letters of allotment in respect of the Consideration Shares in the name of Mr Coleman and the Vendor, and Mr Coleman and the Vendor shall execute such renounceable letters of allotment in blank and return them to the Purchaser to be held in escrow pending Completion.

6. Completion

- 6.1 Subject to the due satisfaction or waiver of the conditions contained in clause 2.1, and the provisions of this clause, Completion shall take place at the offices of the Purchaser on the Completion Date or at such other place and/or on such other date as may be agreed between the parties. Completion and the matters set out in this clause shall be conditional, in particular, upon the satisfaction of the condition set out in subclause 2.1(b) and such action taken and documents executed and delivered shall remain in escrow pending satisfaction of that condition.

- 6.2 On or before Completion Mr Coleman and the Vendor shall procure that:

- (a) except for debts arising in the ordinary course of business, all loans due to the Company from Mr Coleman and the Vendor and every Subsidiary Undertaking of the Guarantor shall be repaid;
- (b) all loans (if any) due to the Company from directors or employees of the Company shall be repaid; and
- (c) the new memorandum and articles of association of the Company, in the agreed terms, shall be adopted.

6.3 On Completion Mr Coleman and the Vendor shall cause to be delivered to the Purchaser:

- (a) duly executed transfers of the Shares and the Additional Shares by the registered holders thereof in favour of the Purchaser (or as it may direct) together with the relative share certificates;
- (b) such other documents (including any power of attorney under which any document required to be delivered under this clause has been executed and any waivers or consents) as the Purchaser may require to enable the Purchaser or its nominees to be registered as holders of the Shares and the Additional Shares;
- (c) the Certificate of Incorporation, Certificates of Incorporation on Change of Name and Statutory Books of the Company;
- (d) a letter from the Vendor to the Purchaser listing any matters which have arisen for the purposes of clause 8.6;
- (e) the Deed of Indemnity duly executed by the covenantors named therein;
- (f) irrevocable powers of attorney in the agreed terms executed by each holder of the Shares and the Additional Shares in favour of the Purchaser appointing the Purchaser to be its lawful attorney;
- (g) certified copies of special resolutions in agreed terms changing the names of the Vendor, the Company, the Guarantor, Headway Computer Products Limited and Headway Scanning Systems Limited together with the appropriate fee for the same day registration of the change of name for each of the Vendor and the Guarantor;
- (h) the title deeds to the Property together with a letter of consent to the grant of the Lease from Barclays Bank PLC; and
- (i) in relation to the Shares and the Additional Shares, a letter of non-crystallisation from Barclays Bank PLC and a deed of release and letter of non-crystallisation from the Vendor, each in the agreed terms.

6.4 On Completion Mr Coleman and the Vendor shall cause a written resolution of the director of the Company to be passed by which:

- (a) the said transfers of the Shares and the Additional Shares shall be approved for registration (subject only to the transfers being duly stamped at the cost of the Purchaser);
- (b) such persons as may be nominated by the Purchaser shall be appointed directors of the Company (within the maximum number, if any, permitted under the Company's Articles of Association);
- (c) the Deed of Indemnity shall be approved and executed by the Company;
- (d) all existing instructions to bankers shall be revoked and shall be replaced with alternative instructions in such form as the Purchaser may require;
- (e) the accounting reference date of the Company shall be specified as 31 March pursuant to Section 224(2) Companies Act 1985; and
- (f) KPMG shall be appointed auditors to the Company.

6.5 On Completion the Purchaser shall, following compliance by Mr Coleman and the Vendor with the foregoing provisions:

- (a) procure that a bank transfer (same day funds) for £2,500,000 is made to Barclays Bank PLC, 171 High Street, Guildford, Surrey GU1 3AN, Sort Code: 20-35-35, Account number: 80873411 (Headway Technology Group Plc Business Premium Account) on account of the Initial Consideration; and
- (b) procure that a bank transfer (same day funds) for £500,000 is made to the account specified in clause 7.1 to be held as the Stakeholders' Account;
- (c) deliver to the Vendor's Solicitors counterparts of the Deed of Indemnity duly executed by the Purchaser.

- 6.6 The Vendor's Solicitors are hereby irrevocably authorised by Mr Coleman and the Vendor to receive all amounts expressed to be payable to them hereunder and the receipt by the Vendor's Solicitors of each such amount shall be an absolute discharge to the Purchaser who shall not be concerned to see to the application of any such amount.

7. Retention

- 7.1 The Retention shall be paid into a designated interest-bearing account with Lloyds Bank PLC, Market Place, Reading (Account No. ^{754 1799} ~~754 1799~~) in the joint names of the Vendor's Solicitors and the Purchaser's Solicitors (the "Stakeholders' Account") immediately after Completion and the Retention (together with interest accrued thereon) shall be applied in accordance with the provisions of this clause.

- 7.2 If on the first anniversary of the Completion Date no Claim (as defined in clause 7.7) shall have been notified by the Purchaser to the Vendor, the parties shall procure that £250,000 of the Retention (together with accrued interest) shall be released in full to the Vendor's Solicitors on the Business Day next following the first anniversary of the Completion Date.

- 7.3 If the Purchaser shall have notified the Vendor of any Claim on or before the first anniversary of the Completion Date, the parties shall procure that the amount by which £250,000 exceeds the estimated aggregate maximum amount of such Claim(s) (whether settled or not) shall be paid out of the Retention to the Vendor's Solicitors on the Business Day next following the first anniversary of the Completion Date.

- 7.4 If on the second anniversary of the Completion Date no Claim has been notified by the Purchaser to the Vendor or there is no Claim which has not been finally settled or otherwise determined, the parties shall procure that the remainder of the Retention (together with accrued interest) shall be released in full to the Vendor's Solicitors on the Business Day next following the second anniversary of the Completion Date.

- 7.5 If the Purchaser shall have notified the Vendor of any Claim which has not been finally settled or otherwise determined on or before the second anniversary of the Completion Date, the parties shall procure that the amount by which the Retention remaining exceeds the estimated aggregate amount of such Claim(s) shall be paid out of the Retention to the Vendor's Solicitors on the next Business Day next following the second anniversary of the Completion Date.

- 7.6 Where a Claim has been notified but the amount thereof has not been estimated by the Purchaser, no amount of the Retention will be released until such Claim is estimated, finally settled or otherwise determined, in which event the provisions of clause 7.3 (if such event occurs after the first but before second anniversary of the Completion Date) or otherwise clause 7.5 shall be reapplied with the relevant payment (if any) being made on the fifth Business Day next following the date of such estimation, settlement or determination.
- 7.7 If the Purchaser shall notify the Vendor of a claim or claims under this Agreement and/or the Business Purchase Agreement and/or the Deed of Indemnity (each, a "Claim") on or before the second anniversary of the Completion Date, the Purchaser shall as soon as practicable thereafter and at all times thereafter use all reasonable endeavours to estimate the maximum amount of such claim(s) (if capable of estimation) and shall notify the Vendor in writing of the estimated amount of such claim(s) or the fact that the same are incapable of estimation.
- 7.8 If any such Claim(s) are not admitted by the Vendor the Retention (or the balance remaining after any interim distribution) shall be held in the Stakeholders' Account until such Claim(s) are finally settled or otherwise determined.
- 7.9 Upon the final settlement or determination of such Claim(s), the parties shall procure that the Retention (or the balance thereof) shall be forthwith applied in or towards the discharge of the amount(s) agreed or determined to be payable to the Purchaser and/or the Company (as the case may be) in respect of such Claim(s) and the residue (if any) remaining after the complete discharge of such Claim(s) shall be released to the Vendor's Solicitors.
- 7.10 All interest accrued on the Retention shall be paid to the Vendor on the Business next following the first, second and subsequent anniversaries of the Completion Date.
- 7.11 The Vendor and the Purchaser shall promptly give to the Vendor's Solicitors and the Purchaser's Solicitors respectively all such written instructions as shall be necessary to give effect to the provisions of this clause.
- 7.12 Where any Claim is settled or determined in favour of the Purchaser, the Purchaser shall always have recourse first against the Retention and only if the same is exhausted shall the Purchaser have any claim against the assets of the Vendor or the Guarantor.

7.13 Irrespective of the other provisions of this clause 7, no amount of the Retention will be released to the Vendor under clauses 7.4 or 7.5 until the Purchaser is reasonably satisfied that the Vendor has satisfied a liability to corporation tax on capital gains in respect of the transfer of the Business pursuant to the Business Purchase Agreement. It is accepted that the Purchaser will be so reasonably satisfied by evidence of the submission to the Inland Revenue by the Vendor of a tax return including computation of a gain arising on the transfer of the Business pursuant to the Business Purchase Agreement.

7.14 The Vendor and the Purchaser agree that following Completion they will jointly approach the Inland Revenue with a view to obtaining confirmation that no Section 179 TCGA liability arises in the Company as a result of the transfer of the Business pursuant to the Business Purchase Agreement.

8. Warranties

8.1 The Vendor hereby represents, warrants and undertakes to the Purchaser in the terms of the Warranties and agrees that if any of the Warranties is found to be untrue or incorrect, then, subject to the provisions of this Agreement, the Purchaser may, in full satisfaction of the rights and remedies to which it is entitled, require the Vendor, on demand, to pay to the Purchaser or the Company (as the Purchaser shall direct) an amount equal to the amount by which the amount of any liability (whether existing, prospective or contingent) or the value of any asset (whether existing, prospective or contingent) of the Company is respectively greater or less than it would have been if the Warranty in question had been true and correct, together with all costs and expenses reasonably incurred or sustained by the Purchaser or the Company as a result of such breach.

8.2 The Warranties are given subject to the matters fully, properly and adequately disclosed in the Disclosure Letter and in the documents annexed thereto in sufficient detail to enable the Purchaser properly to evaluate the same and in relation to which the Vendor shall have no liability to the Purchaser. No other information, unless expressly referred to herein, of which the Purchaser may have knowledge (whether before or after the date hereof and whether actual or constructive) shall prejudice or affect in any way the Purchaser's ability to make any claim nor to reduce the amount recoverable, in respect of any claim arising from any breach of a Warranty.

- 8.3 Each of the Warranties set out in each paragraph and each subparagraph of Schedules III and IV shall be separate and independent and save as expressly provided shall not be limited by reference to any other paragraph or subparagraph or anything in this Agreement or the Schedules.
- 8.4 The Warranties shall be deemed to be given at the date of this Agreement and shall be deemed to be repeated (*mutatis mutandis*) at Completion with reference to the facts then existing (save that references to any fact, matter or thing existing, occurring or having occurred at or before the date of this Agreement shall be construed as references to the Completion Date), PROVIDED that, without prejudice to the provisions of clause 5, no right to damages or compensation or otherwise in respect of breach of any Warranty shall arise in consequence only of one or more of the following:
- (a) the occurrence after the date of this Agreement of an event constituting a breach or non-fulfilment of any Warranty when repeated at Completion if such event could not reasonably have been avoided or prevented by action taken by the Vendor at its reasonable cost after the date of this Agreement and before Completion and such occurrence is duly notified in writing to the Purchaser in accordance with the provisions of clause 8.6;
 - (b) any act or thing done or omitted to be done at any time after the date of this Agreement at the request of or with the approval of the Purchaser signified or confirmed in writing; or
 - (c) any breach which arises from the usual course of the Business prior to Completion.
- 8.5 The Vendor shall ensure that (save if and insofar as may be necessary to give effect to this Agreement) neither it nor the Company shall knowingly cause or permit anything to be done or omitted to be done either before or at Completion which would constitute a material breach of any of the Warranties if given at any time down to and including Completion or which would make any of the Warranties materially inaccurate or misleading if they were so given.
- 8.6 The Vendor undertakes to the Purchaser that upon its becoming aware of the actual, impending or threatened occurrence of any event after the date of this Agreement (and before and after Completion) which might reasonably be expected to cause or constitute a breach of

any of the Warranties (whether when repeated at Completion or otherwise) or to give rise to a claim under the Deed of Indemnity (whether or not executed) it will forthwith give written notice thereof to the Purchaser. Unless, in the reasonable opinion of the Purchaser, it would be detrimental to the Business, the Purchaser will permit the Vendor, at its own cost, promptly to prevent or remedy the same.

8.7 (a) The Purchaser has entered into this Agreement on the basis of the Warranties and in reliance on them.

(b) Liability under any Warranty shall not be confined to breaches discovered before Completion nor in any way be modified or discharged by Completion.

8.8 Where any statement set out in Schedules III and IV is expressed to be given or made to the best of the Vendor's knowledge or to the best of the Vendor's knowledge and belief or after having made all proper enquiry, or as qualified in some other manner having substantially the same effect, such statement (save where otherwise expressly stated) shall be deemed to be qualified by the additional statement that the Vendor has diligently made all reasonable enquiries in relation to such matter prior to the date hereof.

9. Limitation on warranty

9.1 (a) The Vendor shall be under no liability in respect of any breach or non-fulfilment of any of the General Warranties unless the Purchaser has served on the Vendor a written notice on or before the second anniversary of the Completion Date giving reasonable details of the claim, specifying the matters which are relied upon and giving so far as practicable the Purchaser's best estimate of the Vendor's liability in respect thereof provided that in the event of proceedings in relation to any such notified claim not being issued and served within nine months of the relevant notice (unless previously satisfied or settled or withdrawn) the Vendor shall cease to be liable therefor.

(b) The Vendor shall be under no liability in respect of any breach or non-fulfilment of any of the Tax Warranties unless the Purchaser has served on the Vendor a written notice on or before the seventh anniversary of the Completion Date giving reasonable details of the claim specifying the matters which are relied upon and giving so far as practicable the Purchaser's best estimate of the Vendor's liability in respect thereof

provided that in the event of proceedings in relation to any such notified claim not being issued and served within nine months of the relevant notice (unless previously satisfied or settled or withdrawn) the Vendor shall cease to be liable therefor.

9.2 (a) The Purchaser shall not make any claim against the Vendor in respect of any breach of nonfulfilment of any of the Warranties unless the amount of such claim shall exceed £500 (provided that for this purpose separate claims relating to the same subject matter shall be aggregated).

(b) No claim shall be made in respect of any breach or nonfulfilment of any of the Warranties unless the aggregate amount of all such claims and claims under the Deed of Indemnity exceeds £20,000 PROVIDED that if such aggregate amount does exceed £20,000; the Vendor's liability shall not be limited to the excess and the whole amount shall be recoverable in full.

(c) The total amount of the liability of the Vendor in respect of any breach or nonfulfilment of any of the Warranties and the Deed of Indemnity shall be limited to and in no event exceed the aggregate of the Initial Consideration and the Deferred Consideration payable to the Vendor, save that if the Deferred Consideration has not been determined at the time such liability is to be determined and the aggregate amount of the liabilities of the Vendor hereunder and under the Deed of Indemnity exceeds £3,000,000, the amount of any liability above £3,000,000 shall not be determined until the Deferred Consideration has been agreed or determined in accordance with this Agreement.

9.3 If any claim in respect of any of the Warranties is based upon a liability which is contingent only, the Vendor shall not be liable hereunder to make any payment to the Purchaser in satisfaction of such claim unless and until such contingent liability becomes an actual liability and is due for discharge.

9.4 The Vendor shall not be liable for such claims as may arise after the date hereof in relation to the Warranties and which would not have arisen but for some act or omission of the Purchaser (or persons deriving title under it) after the date hereof otherwise than in the ordinary course of trading or where no other course of action was available to the Purchaser (including acting pursuant to any legally binding commitment entered into by the Company

prior to Completion) and in particular (without prejudice to the generality of the foregoing) the Vendor shall not be liable in respect of:

- (a) any act or transaction carried out in pursuance of this Agreement; or
- (b) any change in accounting policy or practice relating to the Business introduced or having effect after Completion save for any change required to bring the Accounts (as defined in the Business Purchase Agreement) into compliance with United Kingdom generally accepted policies or practices.

9.5 No claim for breach of the Warranties in Schedule III shall be made by the Purchaser to the extent that any provision or reserve properly and adequately made in respect of the matter giving rise to the claim was made in the Accounts or shall otherwise have been taken into account and identified as a liability in the Accounts. For the purposes of this clause 9.5, any specific provision or reserve shall, to the extent that it is no longer required, be regarded as a general provision or reserve in respect of the category of asset or liability in respect of which it is made.

9.6 The Vendor shall not have any liability under the Warranties in respect of any loss if and to the extent that the same would have been covered by any policy of insurance effected by the Vendor or the Guarantor or any Subsidiary Undertaking in relation to the Business in force at Completion if all such policies of insurance had been maintained in force by the Company thereafter.

9.7 Any sum paid to the Purchaser pursuant to the Warranties by the Vendor shall be deemed to reduce to the extent of such sum the purchase price of the Shares and the Additional Shares hereunder.

9.8 The Purchaser shall, and the Purchaser shall procure that the Company shall, save where in the Purchaser's reasonable opinion it would be detrimental to the Business and subject to the Purchaser or the Company (as the case may be) being indemnified and secured to its reasonable satisfaction against all reasonable expenses thereby incurred, take all such action as may be reasonably requested by the Vendor to mitigate any liability in respect of which a claim is or may be made under the Warranties. Save as aforesaid, such action shall include (without limitation) the Purchaser allowing the Vendor to take on or take over at its own

expense the conduct of all proceedings, the Purchaser and/or the Company providing such information and assistance as the Vendor may reasonably require in connection with the preparation for and conduct of such proceedings PROVIDED THAT the Vendor shall keep the Purchaser and the Company fully informed as to any action taken or proposed to be taken in connection with such dispute and all other relevant matters and shall not compromise or settle any claim without the prior written consent of the Purchaser.

- 9.9 To the extent that any breach of or claim under the Warranties is capable of remedy by the Vendor the Purchaser shall, and shall procure that the Company shall, save where in the Purchaser's reasonable opinion it would be detrimental to the Business, afford the Vendor such opportunity as is reasonable to remedy the breach or situation complained of.
- 9.10 If the Vendor pays to the Purchaser an amount in respect of any breach of the Warranties and the Purchaser subsequently recovers from a third party a sum which is referable to such breach or claim or otherwise mitigates its loss the Purchaser shall forthwith pay or repay to the Vendor any sums received by it in respect of such breach (or any appropriate part thereof) (after deducting all reasonable costs charges and expenses incurred by the Purchaser in making such recovery) up to the maximum of the total amount paid by the Vendor in respect of such breach.
- 9.11 If the Vendor shall pay to the Purchaser any sum or shall suffer any deduction from a payment of any amount in respect of any claim made by the Purchaser pursuant to this Agreement the Purchaser so far as legally possible shall thereafter at the request in writing of the Vendor and at the Vendor's expense assign to the Vendor to the extent to which the Vendor shall have so paid or suffered a deduction the rights of action (if any) of the Purchaser or the Company (as the case may be) against any third party in relation thereto and thereafter the Purchaser shall give and shall procure that the Company shall give to the Vendor at the cost of the Vendor such assistance in relation to the enforcement of such rights of action as the Vendor may from time to time reasonably require. The Vendor shall indemnify the Purchaser and the Company against any liability arising out of the performance of this clause 9.11.
- 9.12 The Vendor shall not be liable in respect of any breach of the Warranties if and to the extent that the loss occasioned thereby has been recovered under the Deed of Indemnity or under the Business Purchase Agreement.

9.13 The limitations set out in clause 9.2 on the liability of the Vendor in relation to claims for breach of any of the Warranties shall not apply to any claim for breach of any of the Warranties when such a claim involves any fraudulent act or omission on the part of the Vendor or the Guarantor or where it is proved that the Vendor or the Guarantor has knowingly withheld any material disclosure relating to such claim, in each case prior to Completion.

10. **Confidentiality and announcements**

10.1 For the purpose of assuring the full benefit of the business and goodwill of the Company and in consideration of the agreement of the Purchaser to buy the Shares and the Additional Shares on the terms hereof, each of Mr Coleman and the Vendor hereby agrees with the Purchaser for itself and for the Company as a separate and independent agreement that it will not at any time hereafter divulge or communicate to any person (other than to officers, employees or professional advisers of the Company whose position makes it necessary to know the same or to the Purchaser or its officers, employees or professional advisers) any confidential information concerning the business, accounts, financial or contractual arrangements or other dealings, transactions or affairs of the Company which may be within or which may come to its knowledge, that it will use all reasonable endeavours to prevent the publication or disclosure of any confidential information concerning such matters or any of them (but without being required to incur any expenditure in respect thereof) and that it will not knowingly do anything to harm the goodwill of the Company as at the date hereof.

10.2 No announcement or information concerning this sale and purchase or any ancillary matter shall be made or released before or after Completion to the public or to the press (national, provincial, local or trade) or the suppliers or customers of the Company by any of the parties hereto without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed) PROVIDED that nothing shall restrict the making by the Purchaser (even in the absence of agreement by the other parties) of any statement or disclosure which may be required by law or called for by the requirements of the London Stock Exchange.

10.3 No announcement or information concerning this sale and purchase or any ancillary matter shall be made before or after Completion to any employees of the Company by the Vendor without the prior written consent of the Purchaser PROVIDED that nothing shall restrict the

Vendor from making such disclosures to directors of the Company as may be reasonably necessary for the performance by such directors of their duties.

11. Further assurance and availability of information

11.1 Each of Mr Coleman and the Vendor shall perform such acts and execute such documents as may be reasonably required on or after Completion by the Purchaser for securing to or vesting in the Purchaser the legal and beneficial ownership of the Shares and the Additional Shares in accordance with the terms and conditions of this Agreement and assuring to the Purchaser the rights hereby granted.

11.2 The Vendor shall cause to be made available to the Purchaser all information in its possession or under its control which the Purchaser may from time to time reasonably require (before or after Completion) relating to the business and affairs of the Company and shall permit the Purchaser to have access to documents containing such information and at its own expense to take copies thereof.

11.3 The Purchaser shall cause to be made available to the Vendor on reasonable notice all information in the possession of the Purchaser or the Company or under the control of one of them which the Vendor may reasonably require relating to matters concerning the Company prior to the date hereof and shall permit the Vendor to have access to all such relevant documents and records in whatever form containing such information and at its own expense to take copies thereof, save that such information obtained shall be subject to the restriction set out in clause 10.1, where applicable.

12. Interest

If any party fails to make any payment hereunder on the due date or within the applicable period for payment, such party shall also pay interest to the payee on the amount for the time being outstanding calculated on a daily basis (compounded quarterly until payment) at the rate of 4 per cent. per annum above the base lending rate of Barclays Bank PLC for the time being in force on the basis of actual days elapsed from the due date for payment or from the date of the expiry of such period (as the case may be) until payment in full (after as well as before judgment).

13. Continuing obligations and assignment

- 13.1 Each of the obligations, warranties, representations, indemnities and undertakings accepted or given by Mr Coleman or the Vendor or the Purchaser pursuant to this Agreement (hereinafter called the "Obligations"), excluding any Obligation fully performed at Completion, shall continue in full force and effect notwithstanding Completion taking place.
- 13.2 No assignment of any of the provisions of this Agreement may be made without the consent of the other parties.

14. Costs

Each party to this Agreement shall pay its own costs, charges and expenses incurred in the negotiation, preparation, completion and implementation of this Agreement (and the documents referred to herein) save that in the event that Completion shall not occur due to the condition in clause 2.1(b) not being satisfied or waived by 6 pm on 7 December 1995, the Purchaser shall reimburse the Vendor's reasonable legal and accounting costs up to an aggregate maximum amount of £20,000 (including VAT).

15. Notices

- 15.1 Any notice or other communication to be given hereunder shall either be delivered personally or sent by first class post or facsimile transmission. The address for service shall be the registered office of the party in question, and in the case of Mr Coleman the address of the Vendor, or such other address as it may have previously notified in writing to the other parties. All notices shall be deemed to have been served as follows:
- (a) if personally delivered, at the time of delivery;
 - (b) if posted, at the expiration of 72 hours after the envelope containing the same was delivered into the custody of the postal authorities and shall be effective notwithstanding that it may be misdelivered or returned undelivered; and
 - (c) if communicated by facsimile transmission, subject to clause 15.2 at the time of transmission,

PROVIDED that where, in the case of delivery by hand or transmission by facsimile, such delivery or transmission occurs after 6 p.m. on a Business Day or on a day which is not a Business Day, service shall be deemed to occur at 9 a.m. on the next following Business Day.

15.2 In proving such service it shall be sufficient to prove that:

- (a) personal delivery was made; or
- (b) the envelope containing such notice was properly addressed and delivered into the custody of the postal authorities as a prepaid first class letter; or
- (c) the facsimile transmission was made to the number notified by the party in question for this purpose and that evidence of receipt of the transmission in a form that was complete and legible was obtained in person or by telephone and where service is made by facsimile transmission the original communication shall be sent by post or delivered as soon as practicable.

16. **Severability and suspension of restrictions**

16.1 If any provision or provisions of this Agreement (or of any document referred to herein) is or at any time becomes illegal, invalid or unenforceable in any respect, the legality, validity and enforceability of the remaining provisions of this Agreement (or such document) shall not in any way be affected or impaired thereby.

16.2 No provisions of this Agreement or any agreement or arrangement of which it forms part by virtue of which this Agreement or such agreement or arrangement is subject to registration under the Restrictive Trade Practices Acts 1976 and 1977 shall take effect until the day after particulars of this Agreement or the agreement or arrangement of which it forms part (as the case may be) have been furnished to the Director General of Fair Trading pursuant to Section 24 of the Restrictive Trade Practices Act 1976.

17. Entire agreement and variation

17.1 This Agreement (together with the documents referred to herein) constitutes the entire agreement between the parties in relation to the transactions referred to herein or therein and supersedes any previous agreement between the parties in relation to such transactions.

17.2 Each of the parties acknowledges that:

(a) it does not enter into this Agreement on the basis of and does not rely, and has not relied, upon any statement or representation (whether negligent or innocent) or warranty or other provision (in any case whether oral, written, express or implied) made or agreed to by any person (whether a party to this Agreement or not) except those expressly repeated or referred to in this Agreement and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be a claim for damages for breach of contract under this Agreement;

(b) this clause 17.2 shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Agreement which was induced by fraud, for which the remedies available shall be all those available under the law governing this Agreement.

17.3 No variation of any of the terms of this Agreement (or of any other documents referred to herein) shall be effective unless it is in writing and signed by or on behalf of each of the parties hereto or thereto. The expression "variation" shall include any variation, supplement, deletion or replacement however effected.

18. General provisions

18.1 Time shall not be deemed to be of the essence of this Agreement.

18.2 The provisions of this Agreement, insofar as the same shall not have been performed at Completion, shall remain in full force and effect notwithstanding Completion.

18.3 Any right of rescission or termination conferred upon the Purchaser under this Agreement shall be in addition to and without prejudice to all other rights and remedies available to it by reason of any breach of any provisions of this Agreement (including the Warranties).

18.4 No delay or omission of any party in exercising any right, power or privilege hereunder shall operate to impair such right, power or privilege or be construed as a waiver thereof and no single or partial exercise or non-exercise of any right, power or privilege shall in any circumstances preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

18.5 Each of Mr Coleman and the Vendor agrees that he, it and its nominees hereby waive any rights which may have been conferred on them under the Articles of Association of the Company or otherwise or in any other way to have any of the Shares or the Additional Shares offered to them for purchase at any time on or before the transfer of the Shares and the Additional Shares pursuant to the provisions of this Agreement.

19. Guarantee

19.1 In consideration of the Purchaser's entering into this Agreement with the Vendor at the request of the Guarantor, the Guarantor hereby irrevocably and unconditionally, as primary obligor, undertakes and guarantees the full, prompt and complete performance by the Vendor of all its obligations under this Agreement and the Deed of Indemnity and the due and punctual payment of all sums now or subsequently payable by the Vendor under this Agreement or the Deed of Indemnity when the same shall become due and undertakes with the Purchaser that if the Vendor shall default in the payment of any sum under this Agreement and the Deed of Indemnity the Guarantor will forthwith on demand by the Purchaser pay such sum to the Purchaser.

19.2 The guarantee contained in clause 19.1 is a continuing guarantee and shall remain in force until all the obligations of the Vendor under this Agreement and the Deed of Indemnity have been fully performed and all sums payable by the Vendor have been fully paid.

19.3 The obligations of the Guarantor shall not be affected by any act, omission, matter or thing which, but for this provision, might operate to release or otherwise exonerate the Guarantor from its obligations or affect such obligations, including without limitation and whether or not known to the Guarantor:

- (a) any time, indulgence, waiver or consent at any time given to the Vendor or any other person;
- (b) any compromise or release of or abstention from perfecting or enforcing any right or remedies against the Vendor or any other person;
- (c) any legal limitation, disability, incapacity or other circumstances relating to the Vendor or any other person or any amendment to or variation of the terms of this Agreement or any other document referred to in this Agreement;
- (d) any irregularity, unenforceability or invalidity of any obligations of the Vendor under this Agreement, or the dissolution, amalgamation, reconstruction or insolvency of the Vendor.

19.4 The guarantee contained in clause 19.1 may be enforced by the Purchaser without the Purchaser's first taking any steps or proceedings against the Vendor.

19.5 All payments to be made by the Guarantor shall be made in full without set-off or counterclaim and free and clear of and without any deduction whatsoever except to the extent required by law.

20. Governing law and jurisdiction

This Agreement (together with all documents referred to herein) shall be governed by and construed and take effect in accordance with English law and each of the parties hereto hereby submits to the jurisdiction of the High Court of England and agrees that in the event of any action between any of the parties hereto being commenced in respect of this Agreement or any

matters arising under it, the process by which it is commenced (where consistent with the applicable court rules), may be served on it or him in accordance with clause 15.

AS WITNESS the hands of the parties hereto or of their duly authorised representatives the day and year first before written.

SCHEDULE I

The Shares and the Additional Shares

| 1. Name and Address of the registered holder of the Shares | 2. Number of Shares held | 3. Number of Additional Shares to be issued and allotted | 4. Allocation of proceeds of consideration |
|--|--------------------------------|--|---|
| <i>Handwritten: [Signature]</i> Mr Coleman of Millbrook, The Warren, East Horsley, Leatherhead, Surrey, KT24 5RH | 2 Ordinary Shares | | £ 29.70 |
| Headway Technology Group Plc of Headway House as aforesaid | | 205,000 Ordinary Shares | £ 2,999,969.30 |
| Headway Technology Group Plc of Headway House, as aforesaid | | 1 Preference Share | £1 and the Deferred Consideration |

SCHEDULE II

The Company

Instar Enterprises Limited

| | | | |
|-----|--------------------------------|---|-----------------------------|
| 1. | Registered number | : | 3130010 |
| 2. | Registered office | : | Headway House, as aforesaid |
| 3. | Date of incorporation | : | 23 November 1995 |
| 4. | Class of company | : | Private, limited by shares |
| 5. | Authorised share capital | : | £1,000 |
| 6. | Issued share capital | : | £2 |
| 7. | Directors'/Shareholders' Loans | : | None |
| 8. | Directors | : | Paul Coleman |
| 9. | Secretary | : | Sarah Buckle |
| 10. | Accounting reference date | : | None |
| 11. | Auditors | : | None |
| 12. | Tax district and reference | : | None |
| 13. | VAT Number | : | None |
| 14. | Mortgages and Charges | : | None |
| 15. | Subsidiaries | : | None |

SCHEDULE III

General Warranties

The Warranties in this Schedule are the General Warranties.

In this Schedule:

- (a) "connected" has the meaning attributed to it by Section 839 of the ICTA 1988; and
- (b) "Encumbrance" includes any charge, debenture, mortgage, pledge, lien, assignment, hypothecation, security interest, title retention or other security agreement or arrangement.

A. Preliminary

- A.1 All information set out in the Recitals and Schedules I and II is true and accurate in all respects and (as far as the Vendor is aware) there is no matter which renders any of such information untrue, inaccurate, incomplete or misleading.

B. Business since incorporation

B.1 Since incorporation:

- (a) the Company has not carried on any business;
- (b) the Company has not acquired or disposed of or agreed to acquire or dispose of any assets or assumed or incurred or agreed to assume or incur any liabilities (including contingent liabilities) or created, or allowed there to be created, any Encumbrance;
- (c) no dividend or other distribution has been declared, made or paid by the Company;
- (d) the Company has not made or agreed to make any loan;

- (e) the Company has neither disbursed nor received any cash other than in respect of the paid up share capital and amounts received by the Company appear in its accounting records;
- (f) the Company has not entered into, or agreed to enter into, any agreement or arrangement;
- (g) the Company has not borrowed any money and no share or loan capital has been issued or agreed to be issued by the Company other than pursuant to the Business Purchase Agreement;
- (h) other than is referred to in this Agreement, no resolution of the Company's members in general meeting has been passed;
- (i) the Company has not made any claim, notification, disclaimer or election for taxation purposes.

C. Share capital and constitution of the Company

- C.1
- (a) No shares in the capital of the Company have been issued and no transfer of shares in the capital of the Company has been registered otherwise than in accordance with the Articles of Association of the Company from time to time in force, all such transfers being duly stamped.
 - (b) The Register of Members of the Company contains accurate records of its members from time to time.
 - (c) The Company has not at any time purchased or redeemed or agreed to purchase or redeem any shares of any class of its share capital or otherwise reduced or agreed to reduce its issued share capital or any class thereof.
 - (d) The Company has not exercised or purported to exercise any liens over any of its issued share capital.

- (e) There is no Encumbrance affecting the Shares or the Additional Shares or any unissued shares, debentures or other securities of the Company and there is no agreement or commitment to give or create any such Encumbrance.
 - (f) No person has the right (actual or contingent) at any time to call for the allotment, issue, sale or transfer of any share or loan capital of the Company under any option or other agreement or to convert any shares or security into share capital or share capital of a different class.
- C.2 The copy of the Memorandum and Articles of Association of the Company annexed to the Disclosure Letter is true and complete and has embodied therein or annexed thereto a copy of every such resolution or agreement as is referred to in Section 380 of the Companies Act 1985.
- C.3 The Company has complied with the provisions of the Companies Act 1985 and all returns, particulars, resolutions and other documents required under any legislation to be delivered on behalf of the Company to the Registrar of Companies or to any other authority whatsoever have been properly made and delivered.
- C.4 All the accounts, books, ledgers and financial and other material records of whatsoever kind of the Company have been properly and accurately kept and completed and contain true and accurate records of the matters to which they relate.
- C.5 The Company is in possession of all necessary books, records and papers relating to its assets and business.
- C.6 Prior to the date hereof nothing has been done or omitted to be done by the Vendor or the Company which is or may be prohibited by the provisions of Section 151 of the Companies Act 1985.
- C.7 The Shares comprise, and together with the Additional Shares will comprise, all the shares in issue in the capital of the Company as at Completion.

D. Subsidiary undertakings and related operations

- D.1 The Company is not the holder or beneficial owner of any shares or securities of any other company or corporation (whether incorporated in the United Kingdom or elsewhere) and has not agreed to acquire any such shares or securities.
- D.2 The Company is not and has not agreed to become a member of any partnership, joint venture, consortium or other incorporated or unincorporated association and has no branch, agency, place of business or permanent establishment outside the United Kingdom.

E. The Vendor

- E.1 Other than pursuant to the Business Purchase Agreement, there is no indebtedness or liability due, owing or incurred in whatsoever manner by the Company to Mr Coleman, the Vendor or any person connected with the Vendor, whether actually or contingently, whether solely or jointly with any other person and whether as principal or surety and there is no such indebtedness or liability due, owing or incurred to the Company by Mr Coleman, the Vendor or other such person.
- E.2 The Company has not made any gifts of any kind to Mr Coleman or the Vendor or to any person connected with the Vendor or sold any property at a price less than the full market value thereof to Mr Coleman or the Vendor or to any persons connected with it.
- E.3 There is not outstanding, and there has not at any time been outstanding, any agreement or arrangement to which the Company is a party and in which Mr Coleman or the Vendor or any director or any person connected with the Vendor is or has been interested, whether directly or indirectly.
- E.4 The Company has not made any loan or quasi-loan to any director or former director of the Company.
- E.5 The Vendor and persons connected with the Vendor have no interest, directly or indirectly, in any business, firm or company which has a close trading relationship with or is in competition with the Company.

F. Litigation

- F.1 No order has been made or, to the best of the Vendor's knowledge and belief, petition presented or resolution passed for the appointment of an administrator or receiver in relation to the Company, or for its winding-up, nor has any distress, execution or other process been levied against the Company.

G. Employees, etc.

- G.1 There are no employees of the Company.

H. Consequences of this Agreement

- H.1 The acquisition of the Shares and the Additional Shares by the Purchaser or the compliance with the terms of this Agreement will not give rise to or cause to become exercisable any right of pre-emption.

I. Completeness of disclosure

- I.1 All information in the Disclosure Letter or annexed thereto is true and complete and there is no matter or fact which has not been disclosed which renders any such information untrue or misleading.
- I.2 Having regard to the warranties contained in Schedule II of the Business Purchase Agreement, if such warranties were to be given by the Vendor as at the date hereof, none of such warranties would be untrue or incorrect save to the extent disclosed in the disclosure letter delivered by the Vendor to the Company in accordance with the Business Purchase Agreement.

SCHEDULE IV

Tax warranties

The Warranties in this Schedule are the Tax Warranties.

A. General

- A.1 All necessary information, notices, returns, particulars, claims for reliefs and allowances and computations have been properly and duly submitted on time by the Company to the Inland Revenue, HM Customs and Excise and any other relevant taxation or excise authorities and such information notices returns particulars claims and computations are true and accurate and have been prepared on a proper basis and in accordance with correct principles and are not the subject of any question or dispute.

B. Close company

- B.1 The Company is a close company within Section 414 ICTA 1988.
- B.2 No distribution within section 418 ICTA has ever been made by the Company and no such distribution will be made prior to Completion, and no loan or advance within sections 219 to 420 ICTA has ever been made by the Company, nor has the Company released or written off or agreed to release or write off the whole or any part of any such loan or advance.
- B.3 The Company has made no transfers of value within the Inheritance Tax Act 1984.

C. Groups of companies

- C.1 No election has been made by the Company under Section 247 ICTA 1988 and the Company has not made and will not up to Completion make any payment of any dividend without advance corporation tax or any other payments without deduction of tax in the circumstances specified in Section 247(6) ICTA 1988.
- C.2 No charge to tax under Sections 178 or 179 (formerly Section 278 ICTA 1970) or otherwise and no contingent liability pursuant to Sections 178(5) or 179(6) TCGA (formerly Section 278(3C) ICTA 1970) will arise in the Company as a result of entering into and Completion of this Agreement.

D. Value Added Tax

- D.1** The Company has complied with the provisions of VATA and with all statutory requirements, regulations, orders, provisions, directions or conditions relating to value added tax ("VAT"), including the terms of any agreement reached with the Commissioners of Customs & Excise as to the deductibility of input tax or otherwise and has maintained full complete correct and upto date records, invoices and other documents (as the case may be) appropriate or requisite for the purposes thereof and has preserved such records, invoices and other documents in such form and for such periods as are required by the relevant legislation.
- D.2** The Company is registered for VAT purposes and is not and has not at any time been a member of any group of companies for VAT purposes.
- D.3** The Company has not made exempt supplies such or of such amount that it is unable to obtain full credit for input tax paid or suffered by it.

SCHEDULE V

Deferred Consideration

PART A

CONDUCT OF THE BUSINESS AFTER COMPLETION

1. The Vendor and the Purchaser hereby acknowledge and undertake that, having regard to the interests of the Vendor, throughout the period which commenced on 1 October 1995 and which ends on 30 September 1996 ("the Earn Out Period") the objectives of the Company are to maximise the profitability of the Company consistent with promoting the longer term development of the Business.
2. The Purchaser agrees and undertakes throughout the Earn Out Period that unless an appropriate adjustment to the calculation of the Earn-Out Net Profit (as defined in Part B of this Schedule) either is agreed between the Vendor and the Purchaser or, failing such agreement within 10 Business Days of the Purchaser making any such proposal to the Vendor, is determined by the Umpire, the Purchaser will not:
 - 2.1 require the Company to enter into any artificial or other transaction not being in the normal or prudent course of business as conducted at the date hereof, the purpose or one of the main purposes of which is to reduce the profits of the Company during the Earn Out Period;
 - 2.2 cause or permit the Company to make any disposal of the whole or any material part of the assets or business of the Company or to acquire any other business;
 - 2.3 permit trading or lending between the Company on the one hand and the Purchaser Group or any other company on the other, save on a commercial basis and on arm's length terms;
 - 2.4 dispose of the beneficial ownership of the whole or substantially the whole of the issued share capital (directly or indirectly) of the Company;

- 2.5 unless there are grounds for summary dismissal, terminate the employment of David Lewis or adversely alter his terms of employment;
- 2.6 charge the Company with any management charge except to the extent that it represents the cost of the provision of services, facilities and/or personnel to the Company at the Company's request or in respect of central overheads properly related thereto;
- 2.7 seek to move or relocate any of the existing employees of the Company.

PART B

CALCULATION OF "EARN-OUT NET PROFIT" FOR THE PURPOSES OF THE DEFERRED CONSIDERATION

1. For the purposes of calculating the Deferred Consideration, "Earn-Out Net Profit" means the adjusted net profit or loss of the Business to be determined by KPMG (the "Auditors") by reference to the audited profit and loss accounts of the Company being accounts:
 - (a) prepared on the same basis and in accordance with the same accounting principles and policies and the same rates of depreciation as have been applied in the accounts prepared in relation to the Business for the year ended 30 September 1995 and referred to in the Business Purchase Agreement as the Accounts, on the basis that the accounts prepared for the purposes of this Schedule are contractual accounts and not statutory accounts so that in taking a view on materiality levels the Auditors shall regard as material and shall take into account any and all items making up the profit and loss account which in the aggregate amount to £10,000 or more;
 - (b) (to the extent not inconsistent with (a) above) prepared under the historic cost accounting convention and in accordance with accounting principles applicable thereto and generally accepted in the UK and shall be adjusted as follows (insofar as such adjustments have not already been taken into consideration in preparing the audited profit and loss account):
 - (c) after charging or deducting the matters described in paragraph 2 below; and
 - (d) without charging deducting or crediting the matters described in paragraph 3 below; and
 - (e) after making appropriate adjustments in respect of the matters described in paragraph 4 below.

2. Subject to Part A of this Schedule, the matters to be charged or deducted in calculating the Earn-Out Net Profit shall be:

- (a) all operating, management and financial expenses of an income nature;
- (b) full provision to fund all directors' and employees' pension and other benefits, directors' fees and remuneration including all payments in the nature of bonuses or commission or arising out of profit-sharing arrangements save that in respect of Mr Coleman and the two non-executive directors appointed by the Purchaser the maximum aggregate fee shall be £45,000;
- (c) depreciation;
- (d) proper and prudent provision for bad and doubtful debts and against diminution in the value of stocks;
- (e) finance charges and rentals in respect of leases and hire purchase agreements in accordance with SSAP 21;
- (f) any exceptional non-recurring or extraordinary items (excluding items falling within paragraph 3(d));
- (g) the costs of the Auditors as auditors of the statutory accounts of the Company and the accounts prepared for the purpose of this Schedule as at 30 September 1996.

3. The matters not to be charged or deducted or credited in calculating the Earn-Out Net Profit shall be:

- (a) interest on borrowed moneys (which shall not be capitalised);
- (b) any taxation on profits including corporation tax and any similar or additional tax;
- (c) any payment made or received by any member of the Purchaser's Group in respect of the surrender of group relief to or from the Purchaser or any of its subsidiary companies; and

- (d) profits or losses on sales of (i) any real property, (ii) any subsidiary or (iii) the whole or part of the business of any member of the Purchaser's Group to the extent that the same are permitted pursuant to Part A of this Schedule.
- 4. The matters in respect of which appropriate adjustments are to be made in calculating the Earn-Out Net Profit shall be:
 - (a) any additional depreciation arising solely because of a revaluation of fixed assets of the Purchaser's Group;
 - (b) any adjustment agreed or determined pursuant to Part A of this Schedule.

PART C

CALCULATION AND PAYMENT OF THE DEFERRED CONSIDERATION

1. The amount of the Deferred Consideration shall be calculated as follows:
 - (a) The Purchaser shall procure that the Auditors shall draw up and audit a consolidated profit and loss account of the Company for the Earn-Out Period and shall within three months of the end of such period issue to the Vendor and to the Purchaser a Report showing the Earn-Out Net Profit for such period and a final Report in the form set out in Part D of this Schedule showing the amount of the Deferred Consideration.
 - (b) Without prejudice to the generality of paragraph (a) the Purchaser shall itself, and shall procure that the Company shall give to the Auditors all relevant papers and all information and explanations to enable the Auditors to prepare the aforesaid profit and loss account and to issue the Report referred to in paragraph (a) without any qualification.
 - (c) The Vendor's accountants may review the accounts referred to in paragraph (a) in order to satisfy themselves that they have been prepared and audited in accordance with the provisions of this Schedule and that the details contained in the said Report are correct. The Purchaser shall itself and shall procure that the Company and the Auditors shall co-operate promptly and diligently in any such review and that they shall give to the Vendor and the Vendor's accountants all such information and explanations as they may reasonably require in relation thereto, including the Auditors' working papers.
 - (d) Unless within 28 days of receipt of the same (inclusive of the day of receipt) the Vendor informs the Purchaser in writing, giving reasonable particulars and reasons, of any respect in which they are not satisfied that the details of the Earn-Out Net Profit or the amount of the Deferred Consideration as contained in such Report are correct, then the contents of such Report shall be final and binding as between the parties.

- (e) If the Vendor does so inform the Purchaser that it is not so satisfied, the parties shall endeavour within the period expiring 56 days after receipt of the Report to resolve the matter and if the matter is not so resolved either party may require it to be resolved by an Umpire in accordance with the provisions of paragraphs 3 and 4 of this Part C.
 - (f) The Deferred Consideration shall only be payable if the Earn Out Net Profit is equal to or greater than £500,000, and in such event the amount of the Deferred Consideration shall be equal to the amount by which the Earn Out Net Profit exceeds £500,000 multiplied by 5.71, subject to a maximum of £2,000,000.
2. Subject to the provisions of this Schedule the Deferred Consideration shall be satisfied in cash by the Purchaser seven days following the day on which the Report is treated as final and binding between the parties in accordance with paragraph 1(d) above or, if later, seven days after all matters in issue between the parties on such Report are settled pursuant to paragraph 1(e) above.
3. The Umpire shall be a Chartered Accountant or firm of Chartered Accountants agreed on by the Vendor and the Purchaser or, if they cannot agree on such within seven days of either party giving notice in writing to the other that it desires an Umpire to be appointed, such Chartered Accountant or firm of Chartered Accountants as may be nominated on the application of either of them by the President or other the senior officer for the time being of the Institute of Chartered Accountants in England and Wales.
4. If any disagreement or dispute under this Agreement is referred to the Umpire:
- (a) the parties will each use their best endeavours to co-operate with the Umpire in resolving such disagreement or dispute, and for that purpose will provide to him all such information and documentation as he may reasonably require;
 - (b) the Umpire shall have the right to seek such professional assistance and advice as he may require;
 - (c) the fees of the Umpire and other professional fees incurred by him shall be met by the parties in such proportion as the Umpire may direct and, if the fees are paid in full

by either party, the appropriate proportion shall be due from the other party as a debt due on demand;

- (d) the Umpire shall act as expert and not as arbitrator and his decision shall be final and binding on the parties.

5. The Purchaser may not exercise any right of set-off against, or make any deduction from, the Deferred Consideration except to the extent of the amount of any Claim (as defined in clause 7.7) which has been ~~settled or determined by a court or arbitral tribunal.~~ ~~estimated by the Purchaser and which has not been settled by the Vendor~~ ~~at the time the Deferred Consideration becomes due for payment in accordance with paragraph 2 above.~~
- Blue*
[Signature]

PART D

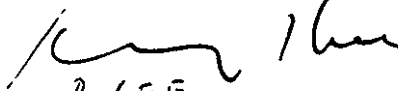
FORM OF REPORT

1. We confirm that we have audited the profit and loss accounts for the financial year from 1 October 1995 to 30 September 1996. Those accounts are attached. They have been drawn up in accordance with the provisions of Schedule V. to the Agreement dated [] between [Vendor] and [Purchaser].
2. Based on the above accounts we confirm that:
 - (i) the aggregate amount of the Earn-Out Net Profit for the financial year is £[];
and
 - (ii) the amount of the Deferred Consideration is £[].

Signed

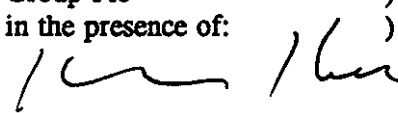
[Auditors]

Signed by Mr Coleman
in the presence of:


R. LEE
Solicitor, Reading

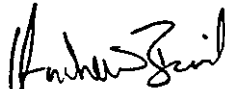


Signed by
for and on behalf of
Headway Technology
Group Plc
in the presence of:

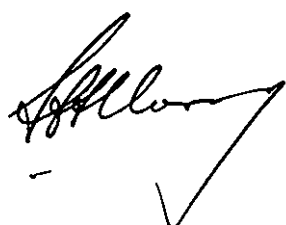




Signed by John Curry
for and on behalf of
Acal plc
in the presence of:


A.M. Reid

Solicitor, 65 Holborn Viaduct, London



Signed by Paul Coleman
for and on behalf of
Headway Holdings Limited
in the presence of:

