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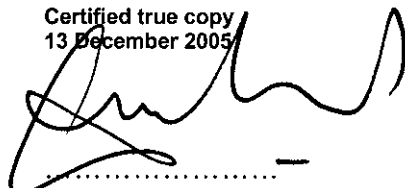
# Share Sale and Purchase Agreement Relating to Campbell & Co (Consultant Surveyors)Limited

Dated

26 November 2004

The Vendors (1)  
Colliers CRE plc (2)

Certified true copy  
13 December 2005

  
.....  
*Company Secretary*

**MICHAEL CONN GOLDSOBEL**

Solicitors

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## DATE

26 November 2004

## PARTIES

- (1) THE VENDORS, further details of whom are set out in Schedule 2 (each "a Vendor", and together "the Vendors"); and
- (2) COLLIERS CRE PLC (number 4195561), whose registered office is at 9 Marylebone Lane, London W1U 1HL ("the Purchaser").

## INTRODUCTION

- (A) The Vendors are the legal and beneficial owners of the entire issued share capital of the Company and as such have the right, power and authority to sell and transfer the Shares in the manner contemplated by this Agreement.
- (B) The Vendors have agreed to sell to the Purchaser and the Purchaser has agreed to purchase the Shares in reliance upon the covenants, undertakings, warranties and indemnities contained in this Agreement, for the Consideration and otherwise in the manner and on and subject to the terms of this Agreement.
- (C) Immediately prior to execution of this Agreement, the Vendors have delivered (or the Vendors' Solicitors have delivered) to the Purchaser (or to the Purchaser's Solicitors) the Disclosure Documents, and the Purchaser has acknowledged receipt of such documents.

## OPERATIVE PROVISIONS

### 1 Interpretation

- 1.1 In this Agreement, except where a different interpretation is necessary in the context, the parties shall be referred to in the manner set out after their names above and the following expressions shall have the following meanings:

Accounts	the audited balance sheet as at the Accounts Date, and the audited profit and loss account for the Financial Year ended on the Accounts Date, of the Company together with the notes, reports, statements (including cash flow statements, if applicable) and other documents which are or would be required by law to be annexed to the accounts of the company concerned and to be sent or made available to members, a copy of each of which has been supplied to the Purchaser and is included in the Disclosure Documents
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Accounts Date	30 June 2004
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Accounts Standards	in relation to the accounts of any body corporate, the applicable requirements of the Companies Acts 1985 and 1989, together with accounting principles, standards and practices which are generally accepted in the United Kingdom, in each case as at the date of the relevant accounts
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ACT	Advance Corporation Tax
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Affiliate	in relation to any body corporate (whether or not registered in the United Kingdom), any holding company or subsidiary
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	of such body corporate or any subsidiary of a holding company of such body corporate and, in relation to an individual, all companies of which he is a director or of which he beneficially owns (or is otherwise interested in) more than 20% of the voting share capital
this Agreement	this agreement including the Introduction and the Schedules
Agreed Proportions	the proportions set out in column 3 of Schedule 2
Business	the business of the Company at the date hereof
Business Day	a day (other than a Saturday, Sunday or public holiday) when banks are open for business in the City of London
Business IP	all Intellectual Property which is used by the Company in its business including all Intellectual Property in the products and services supplied and/or developed by them and any Licenced IP
CAA	the Capital Allowances Act 2001
Chapter 1 Approved	approved by the Inland Revenue for the purposes of Chapter 1 of Part XIV of ICTA
Commercial Information	all technical, financial, commercial and other information of a confidential nature, including, without limitation, trade secrets, know-how, inventions, secret or confidential information in respect of the Company's suppliers and customers (including any customer or supplier lists) and any other person who has had material dealings with them, and any other information relating to the business of the Company, the disclosure of which would be reasonably likely to cause loss or damage to or adversely affect the Company to a material extent
Company	Campbell & Co (Consultant Surveyors) Limited, short particulars of which are set out in Schedule 1 Part I (which expression for the avoidance of doubt includes its Subsidiaries but so that no Warranty given in relation to the Company shall be taken to imply that the Subsidiaries are trading or undertaking the Business
Company Licence	an agreement by a third party to licence part of the Licenced IP to the Company
Company Web Site	any internet web site owned, operated or hosted by the Company or through which the Company conducts its business
Completion	completion of the sale and purchase of the Shares in accordance with the terms of clause 5
Completion Accounts	the balance sheet and profit and loss account of the Company as at Completion to be prepared in accordance with the provisions of clause 6 of this Agreement
Confidential Information	all information which relates to:

- (i) the Company and/or its Affiliates;
- (ii) any aspect of the Business;
- (iii) the provisions of this Agreement;
- (iv) the negotiations relating to this Agreement;
- (v) the subject matter of this Agreement; or
- (vi) the Purchaser and any of its Affiliates from time to time

and which is not in the public domain

Connected Person	a person connected with any of the Vendors or any Director (or any former director of the Company) within the meaning of Section 839 of ICTA
Consideration	the consideration referred to in clause 3.1
Consideration Shares	ordinary shares of £0.50 each (or such other amount as shall be equal from time to time to the nominal value of the ordinary shares of the Purchaser) in the capital of the Purchaser
Contractual Documents	this Agreement, together with any other written agreements between the parties and referred to in this Agreement
Data Protection Legislation	the Data Protection Acts of 1984 and 1998, and the EU Data Protection Directive 95/46/EC
Data Protection Principles	has the same meaning as the term "Data Protection Principles" under the Data Protection Legislation
Debtors	all the outstanding book and other debts of the Company arising out of or in connection with the operation of the Business as set out in the Completion Accounts, net of any provisions made in the Completion Accounts in respect thereof
Deferred Payment Date	the First Business Day immediately following completion of the sale of the feuhold property 23 Royal Exchange Square, Glasgow, G1 3AJ
Determined Claims	means from time to time all claims under this Agreement or the Tax Deed which: <ul style="list-style-type: none"> <li>(a) have been settled by written agreement between the Vendors and the Purchaser, or are the subject of an acknowledgement by the Vendors that they accept liability and quantum in respect of that relevant claim or are withdrawn by the Purchaser; or</li> <li>(b) are the subject of an order as to both liability and quantum made by a court of competent jurisdiction where either no right of appeal lies or the parties are debarred (whether by the passage of time or otherwise) from exercising such a right; or</li> </ul>

- (c) are the subject of an order made by a court of competent jurisdiction for damages to be assessed and an order by such a court assessing the quantum of those damages where either no right of appeal lies against either order or the parties are debarred (by the passage of time or otherwise) from exercising such rights

Directors	the persons specified as directors of the Company in Schedule 1 (the expression "Director" meaning any of them)
Disclosure Documents	the Disclosure Letter and the documents attached thereto as listed in the schedule annexed to the Disclosure Letter
Disclosure Letter	a letter in the agreed form dated on or before the date of this Agreement from the Vendors to the Purchaser, delivered to the Purchaser immediately before execution of this Agreement, for which the Purchaser has acknowledged receipt
Employees	those persons (including Directors) whose names appear in the list of employees included in the Disclosure Documents
Encumbrance	any interest or equity of any person (including any right to acquire, option or right of pre-emption) or any mortgage, charge, pledge, lien, assignment, hypothecation, security interest, title retention or any other security agreement or arrangement
Environment	means and includes (but the expression is not limited to) any of the following media: namely air (including without limitation air within buildings, structures, enclosures and other constrictions above or below ground level), water (including without limitation territorial waters, coastal and inland waters, surface and ground waters, and waters in wells, boreholes, drains and sewers), land (including without limitation surface land and sub-surface strata and any land under sea beds or rivers, wetlands or flood plains), habitats, natural or man-made buildings, structures, enclosures and other constructions, natural resources, flora, fauna and human health
Environmental Consent	any assessment, authorisation, certificate, consent, licence, permission, permit, ruling, variation, modification, transfer or any other information or approval required by any Environmental Law or agreement made pursuant to Environmental Law
Environmental Law	all international, EU, national, federal, state or local laws (both common law and statute law and civil and criminal law) and all subordinate legislation and regulatory codes of practice (including, without limitation, statutory instruments, guidance notes, circulars, directives, decisions, regulations, treaties and conventions) concerning the Environment or health and safety which are or were binding upon the

	Vendors or the Company in the relevant jurisdiction in which any of the Vendors or the Company are or have been operating (including by the export of their products or their Waste thereto) on or before Completion or which are or were so binding upon the Business
Escrow Account	an account in the joint names of the Vendors' and Purchaser's Solicitors to be held by them subject to the provisions of Schedule 4.
Financial Year	a financial year as determined in accordance with Section 223 of the Companies Act 1985
FISMA	the Financial Services and Markets Act 2000
FRS	a Financial Reporting Standard issued by the Accounting Standards Board
FSA	the Financial Services Authority
Good Leaver	a person who (a) has not voluntarily ceased to be an employee of the Purchaser or one of its Affiliates (save in circumstances constituting constructive dismissal) or does so with the agreement of the Purchaser or one of its Affiliates, or (b) ceases to be an employee of the Purchaser or one of its Affiliates as a result of redundancy, death, disability, injury, retirement or of being advised by his doctor to change his work commitment on medical grounds, or (c) has not been lawfully summarily dismissed by the Purchaser or one of its Affiliates and (d) does not intend to set up or be interested in a business in direct competition with the Business
ICTA	the Income and Corporation Taxes Act 1988
IHTA	the Inheritance Tax Act 1984
Intellectual Property	<p>any current and future intellectual property rights, including:</p> <ul style="list-style-type: none"> <li>(a) copyrights, trade marks, trade names, domain names, business names, rights in logos and get-up, inventions, rights in confidential information, trade secrets and know-how including commercial know-how, design rights, patents, utility models, semi-conductor topographies, all rights of whatsoever nature in computer software and data, rights in databases, privacy rights, rights in plant varieties; and</li> <li>(b) all intangible rights and privileges of a nature similar, analogous or allied to any of the above;</li> </ul> <p>in every case in any part of the world and whether or not registered, including in relation to the above:</p> <ul style="list-style-type: none"> <li>(a) all granted registrations and all applications for registration;</li> </ul>

	(b) all renewals, reversions or extensions;
	(c) the right to sue for damages for past infringement; and
	(d) all forms of protection of a similar nature which may subsist anywhere in the world
Key Employee	any person who at, or at any time during the 12 months immediately preceding, the date of this Agreement, or who at the date of Completion, is or was an employee or consultant of or to the Company and who during that period is or was acting at management grade or in a senior capacity or is or was in possession of confidential information relating to the Company
Licensed IP	means any Intellectual Property owned by a third party which is licensed to the Company and used in the Business
Loan Notes	the £600,000 guaranteed fixed rate loan notes of the Purchaser in the agreed form constituted pursuant to board resolution of the Purchaser dated 26 November 2004
Loan Note Guarantee	the guarantee in the agreed form to be given by Barclays Bank PLC of the capital and interest payable under the Loan Notes
Losses	actions, proceedings, losses, taxes (excluding stamp duty), damages, liabilities, claims, interest, costs and expenses including fines, penalties, legal and other professional fees
LPMPA	the Law of Property (Miscellaneous Provisions) Act 1994
Management Accounts	the management accounts of the Company for the period of from the Accounts Date to 31 October 2004, copies of which are included in the Disclosure Documents
Net Asset Value	the amount as shown by the Completion Accounts by which the aggregate value of the Company's assets exceeds, or as the case may be, is less than the aggregate amount of the Company's liabilities
Pensionable Employee	means a director or employee or former director or former employee of the Company
Personal Data	has the same meaning as the term "personal data" under the Data Protection Legislation
Property	the feuhold property 23 Royal Exchange Square, Glasgow, G1 3AJ (registered in the Land Register of Scotland under Title Numbers GLA40872 and GLA64853)
Purchaser's Accountants	Baker Tilly of 2 Bloomsbury Street, London WC1B 3ST
Purchaser's Solicitors	Michael Conn Goldsobel, 24 Queen Anne Street, London W1G 9AX or where the context so admits Skene Edwards, W.S. 5 Albyn Place, Edinburgh EH2 4NJ
Relief	the same meaning as in the Tax Deed



Restricted Territory	shall mean the territory of Scotland
Service Agreements	the service agreements in the agreed form to be entered into on Completion between the Purchaser each of the Vendors, Nick McCaffery and Colin Dalkin
Shares	99,999 issued ordinary shares of £1 each in the capital of the Company, being the entire issued share capital of the Company designated as 33,333 A shares, 33,333 B shares and 33,333 C shares
Software	any and all computer programs in both source and object code form, including all modules, routines and sub-routines thereof and all source and other preparatory materials relating thereto, including user requirements, functional specifications and programming specifications, ideas, principles, programming languages, algorithms, flow charts, logic, logic diagrams, orthographic representations, file structures, coding sheets, coding and including any manuals or other documentation relating thereto and computer generated works
SSAP	a statement of Standard Accounting Practice published by the former Accounting Standards Committee or the present Accounting Standards Board
Stock Exchange	London Stock Exchange plc
Subsidiaries	the companies details of which appear in Schedule 1 Part II
Super- Profit	any net surplus above £400,000 realised on a disposal of the Property under a contract for the sale of the Property concluded within nine months of Completion such net surplus being calculated after all proper and reasonable disposal costs, tax at the relevant rate on the amount by which the sum realised exceeds £400,000, and in the event that completion of the sale takes place more than 9 months after Completion, carrying costs for the period from the date 9 months after Completion until the date of completion of the sale; "carrying costs" shall mean direct running expenses (eg. rates, services, repairs etc) plus simple interest on £400,000 at 7%pa
Tax Deed	the deed of covenant relating to taxation in the agreed form between the Vendors, the Purchaser and the Company
Taxation	the same meaning as in the Tax Deed
Taxing Authority	the same meaning as in the Tax Deed
TCGA	the Taxation of Chargeable Gains Act 1992
Technical Infrastructure	Software, hardware and firmware, plant, equipment, machinery and/or building facilities
Third Party Licence	an agreement by the Company to licence part of the Business IP to a third party, or, in the case of the Licenced

	IP, an agreement by the Company to sub-licence part of the Licenced IP
Transfer Regulations	the Transfer of Undertakings (Protection of Employment) Regulations 1981, as amended
UKLA	the Financial Services Authority acting in its capacity as the United Kingdom's competent authority for listing securities
VAT	Value Added Tax
VATA	the Value Added Tax Act 1994
Vendors' Accountants	Hardie Caldwell, Chartered Accountants, Citypoint 2, 25 Tyndrum Street, Glasgow, G4 0JY
Vendors' Group	the Company and the Subsidiaries
Vendor Loan Notes	the balance of indebtedness of the Company to Thomas Johnston (£272,998 plus £23,380.46 gross interest) and Michael Simpson (£127,003 plus £10,876.98 gross interest) pursuant to loan notes issued to them by the Company on 4 April 2003
Vendors' Solicitors	Miller Samuel LLP RWF House, 5 Renfield Street, Glasgow G2 5EZ or such other solicitors as are appointed by the Vendors from time to time and notified to the Purchaser
Vendors' Representative	Mike Simpson or any such other person as the Vendors may determine from time to time by a majority of the Agreed Proportions and notified in writing to the Purchaser
Warranties	the warranties given in clause 7 and Schedule 6 and each warranty statement shall be a "Warranty"
Waste	waste, controlled waste, directive waste, special waste, hazardous waste or refuse as defined in Environmental Law

- 1.2 All references to statutory provisions, enactments or EC directives shall include references to any amendment, modification, extension, consolidation, replacement or re-enactment of any such provision, enactment or directive (whether before or after the date of this Agreement), to any previous enactment which has been replaced or amended and to any regulation, instrument or order or other subordinate legislation made under such provision, enactment or directive, unless any such change imposes upon any party any liabilities or obligations which are more onerous than as at the date of this Agreement.
- 1.3 A company or other entity shall be a "holding company" for the purposes of this Agreement if it falls within the meaning attributed to that term in section 736 and 736A of the Companies Act 1985 (as amended), and a company or other entity shall be a "subsidiary" for the purposes of this Agreement if it falls within any of the meanings attributed to a "subsidiary" in section 736 and 736A of the Companies Act 1985 (as amended), and the terms "subsidiaries" and "holding companies" are to be construed accordingly.
- 1.4 References to documents "in the agreed form" are to documents in terms agreed between the parties prior to execution of this Agreement.
- 1.5 References in this Agreement and the Schedules to the parties, the Introduction, Schedules and clauses are references respectively to the parties, the Introduction and Schedules to and clauses of this Agreement.

- 1.6 Except where the context specifically requires otherwise, words importing one gender shall be treated as importing any gender, words importing individuals shall be treated as importing corporations and vice versa, words importing the singular shall be treated as importing the plural and vice versa, and words importing the whole shall be treated as including a reference to any part thereof. References to persons shall include bodies corporate, unincorporated associations and partnerships, in each case whether or not having a separate legal personality. References to the word "include" or "including" (or any similar term) are not to be construed as implying any limitation and general words introduced by the word "other" (or any similar term) shall not be given a restrictive meaning by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things.
- 1.7 Clause and paragraph headings and the table of contents are inserted for ease of reference only and shall not affect construction.
- 1.8 Section 839 ICTA is to apply to determine whether one person is connected with another for the purposes of this Agreement.
- 1.9 References to any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept, state of affairs or thing shall in respect of any jurisdiction other than England be deemed to include that which most approximates in that jurisdiction to the English legal term.
- 1.10 Except as otherwise expressly stated herein, nothing in this Agreement confers any rights on any person (other than the parties hereto) pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 1.11 Any reference to "writing" or "written" includes faxes and emails and any other non-transitory form of visible reproduction of words.
- 1.12 References to times of the day are to that time in London and references to a day are to a period of 24 hours running from midnight.

## **2 Sale and purchase of the Shares**

- 2.1 The Vendors shall sell on and with effect from Completion and in accordance with clause 12.1, and the Purchaser, relying on the covenants, undertakings, warranties and indemnities contained in this Agreement, shall, subject to clause 2.2, purchase all of the Shares with any dividends, distributions and rights declared, paid, created or arising after the date of Completion and free from all Encumbrances.
- 2.2 Neither the Purchaser nor the Vendors shall 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.
- 2.3 The Vendors irrevocably and unconditionally waive any and all pre-emption rights in respect of the Shares *whether arising by virtue of any articles of association, agreement, law or otherwise*

## **3 Consideration**

- 3.1 The aggregate consideration for the Shares is £1,620,481 (ONE MILLION SIX HUNDRED AND TWENTY THOUSAND FOUR HUNDRED AND EIGHTY ONE POUNDS), together with 50% of the Super Profit (if any) subject to adjustment in accordance with clause 6 and Schedule 5, and shall (subject to the provisions of this clause 3 and clause 7.11) be paid and satisfied by:
- (a) on Completion:
- (i) the payment in aggregate of £499,441 (FOUR HUNDRED AND NINETY NINE THOUSAND FOUR HUNDRED AND FORTY-FOUR POUNDS) in cash to the

Vendors in the Agreed Proportions but subject to escrow and adjustment in accordance the provisions of clause 6; and

- (ii) the issue of £600,000 of Loan Notes to the Vendors in the Agreed Proportions;
- (b) on the Deferred Payment Date 50% of any Super Profit in the Agreed Proportions
- (c) subject always to the provisions of Schedule 5, on the first anniversary of Completion the issue and allotment, free of any lien, option, charge or other encumbrance whatsoever and credited as fully paid, of Consideration Shares to the Vendors in the Agreed Proportions equal in value to £173,680 (ONE HUNDRED AND SEVENTY THREE THOUSAND SIX HUNDRED AND EIGHTY POUNDS), calculated by reference to the average closing middle market quotation for the ordinary shares in the capital of the Purchaser (as derived from the Alternative Investment Market section of the Daily Official List) on the ten Business Days ending on the second Business Day preceding the first anniversary of Completion;
- (d) subject always to the provisions of Schedule 5, on the second anniversary of Completion the issue and allotment, free of any lien, option, charge or other encumbrance whatsoever and credited as fully paid, of Consideration Shares to the Vendors in the Agreed Proportions equal in value to £173,680 (ONE HUNDRED AND SEVENTY THREE THOUSAND SIX HUNDRED AND EIGHTY POUNDS), calculated by reference to the average closing middle market quotation for the ordinary shares in the capital of the Purchaser (as derived from the Alternative Investment Market section of the Daily Official List) on the ten Business Days ending on the second Business Day preceding the second anniversary of Completion;
- (e) subject always to the provisions of Schedule 5, on the third anniversary of Completion the issue and allotment, free of any lien, option, charge or other encumbrance whatsoever and credited as fully paid, of Consideration Shares to the Vendors in the Agreed Proportions equal in value to £173,680 (ONE HUNDRED AND SEVENTY THREE THOUSAND SIX HUNDRED AND EIGHTY POUNDS), calculated by reference to the average closing middle market quotation for the ordinary shares in the capital of Purchaser (as derived from The Alternative Investment Market section of the Daily Official List) on the ten Business Days ending on the second Business Day preceding the third anniversary of Completion; and
- (f) if a Vendor dies then his entire remaining entitlement to Consideration Shares will immediately be issued to his estate the number of such shares to be calculated by reference to the average closing middle market quotation for the ordinary shares in the capital of Purchaser (as derived from The Alternative Investment Market section of the Daily Official List) on the ten Business Days ending on the second Business Day preceding the date of the Vendor's death.

3.2 The Consideration Shares shall rank *pari passu* in all respects with the ordinary shares of £0.50 each in the capital of the Purchaser in issue as at the date on which such Consideration Shares are issued to the Vendors in accordance with this clause 3.

3.3 The Purchaser shall, prior to their issue and provided that at the time of such issue the ordinary shares of the Purchaser are admitted to the Alternative Investment Market, apply to the Stock Exchange for the Consideration Shares to be issued in accordance with clauses 3.1(c), 3.1(d) and 3.1(e) to be admitted to dealing on the Alternative Investment Market and the Purchaser hereby confirms that it has the requisite authority to allot such Consideration Shares pursuant to Section 80 of the Companies Act 1985.

- 3.4 Any payment made by the Vendors in respect of a breach of any Warranties or pursuant to the Tax Deed shall be and shall be deemed to be a reduction in the price paid for the Shares under this Agreement to the extent legally possible.
- 3.5 The provisions of Schedule 5 shall apply to the Consideration payable by the Purchaser from time to time under clauses 3.1(c), 3.1(d) or 3.1(e).
- 3.6 If the Purchaser shall be unable either to allot or list on the AIM any tranche of the Consideration Shares within 15 Business Days of the due date, the Purchaser shall forthwith pay the relevant tranche of the consideration in cash to the Vendors in the Appropriate Proportions
- 3.7 In the event of a recommended general offer being made for the whole of the issued share capital of the Purchaser, the Purchaser may, at its discretion accelerate the issue of the Consideration Shares (to the extent unissued) or at its discretion elect to pay such outstanding Consideration in cash.

#### **4 Post Completion**

- 4.1 After Completion the parties shall use all reasonable endeavours to procure the sale of the Property as quickly as reasonably possible (and in any event, subject to market conditions, within 9 months of Completion) at the best price reasonably obtainable. The Purchaser shall not be compelled to proceed with any sale that would not give rise to a Super Profit.
- 4.2 By signing this Agreement the Vendors hereby consent as actual and contingent creditors of the Purchaser, to the proposed cancellation by the Purchaser of its share premium account.

#### **5 Completion**

- 5.1 Completion shall take place at such location as may be agreed upon by the Vendors Solicitors and the Purchaser's Solicitors on 26 November 2004, or such other date as the parties may agree. It is agreed that fax copies of the parties' signatures on this Agreement and documents referred to herein shall be accepted as binding on the party so signing.
- 5.2 At Completion, the Vendors shall deliver (where appropriate as agent for the Company) to the Purchaser each of the documents set out in Schedule 3.
- 5.3 When the Vendors have complied with the terms of clause 5.2, the Purchaser shall procure the delivery:
- (a) to the Vendors' Solicitors for the account of the Vendors of a telegraphic transfer in favour of the Vendors' Solicitors for the amount of £499,441 (FOUR HUNDRED AND NINETY NINE THOUSAND FOUR HUNDRED AND FORTY-FOUR POUNDS) of which £200,000 shall be paid by them into the Escrow Account. The Vendors' Solicitors are authorised by the Vendors to receive payment of all consideration due under this Agreement on the Vendors' behalf and the receipt of the Vendors' Solicitors shall be a sufficient discharge for the Purchaser (each of the Vendors hereby acknowledging that the distribution of such consideration to each of them in the Agreed Proportions shall, upon receipt of such amount by the Vendors' Solicitors, be their responsibility and not the Purchaser's);
  - (b) to each of the Vendors of counterparts of the Tax Deed and their relative Service Agreements duly executed by the Purchaser or, as the case may be, the Company, certificates for the Loan Notes to be issued in accordance with clause 3.1(a)(ii), a guarantee in respect of the Loan Notes in the agreed form executed by Barclays Bank plc; and
  - (c) to the Vendors Solicitors immediately following Completion £427,406 by way of loan from the Purchaser to the Company to enable the Company by agreement between it Thomas

Johnston and Michael Simpson forthwith to repay in full at par plus accrued interest the Vendor Loan Notes. The said Thomas Johnston and Michael Simpson warrant and acknowledge to the Company and to Purchaser that such sum is due and owing them at the date of Completion and will be accepted in full and final repayment of the Vendor Loan Notes.

- 5.4 Subject to clause 7.11 and Schedule 5, upon the first, second and third anniversaries of Completion, the Purchaser shall procure that within 15 Business Days of the first, second and third anniversaries of Completion the Consideration Shares to be issued pursuant to clauses 3.1(c), 3.1(d) and 3.1(e) respectively shall be issued and share certificates in respect of such Consideration Shares delivered to the Vendors.
- 5.5 If for any reason the provisions of clauses 5.2 are not fully complied with, the Purchaser shall be entitled (in addition and without prejudice to any other right or remedy available to it) to elect:
- (a) to rescind this Agreement in which case the Purchaser shall not be obliged to purchase any of the Shares or pay any of the consideration payable under clause 3.1; or
  - (b) to complete the purchase of the Shares (at the Purchaser's option) in which case each of the Vendors shall be bound to complete the sale of all the Shares accordingly; or
  - (c) to proceed to Completion insofar as practicable, the Vendors then being obliged to remedy any breach of clause 5.2 as soon as possible.
- 5.6 On Completion, the shareholder agreement between the Vendors dated 1<sup>st</sup> April 2003 shall cease and determine irrevocably.
- 5.7 On Completion, the Purchaser shall deliver to the Vendors an undertaking in agreed form regarding the potential payment to the Vendors of an allowance for employers national insurance contributions relating to Colin Dalkin and Nicholas McCaffery

## **6 Completion Accounts**

- 6.1 Within 30 Business Days from Completion, the Vendors' Accountants shall at the Vendors' cost (in the Agreed Proportions) prepare in accordance with Schedule 4 and deliver to the Purchaser's Accountants draft Completion Accounts.
- 6.2 The Purchasers shall procure that the Purchaser's Accountants, at the expense of the Purchasers, shall as soon as reasonably practicable and in any event on or before the date falling 21 Business Days after receipt by the Purchaser's Accountants of the draft Completion Accounts deliver to the Vendors' Accountants a report setting out the amendments, if any, which they propose should be made to the draft Completion Accounts so that the Completion Accounts are prepared in accordance with this Agreement. If any amendments are proposed, the Vendors and the Purchaser shall then (and until the Completion Accounts are finalised) use all reasonable endeavours to agree the form of the Completion Accounts.
- 6.3 If the Vendors and the Purchaser are unable to resolve all differences of view regarding the Completion Accounts within 20 Business Days of the receipt by the Vendors' Accountants of the report referred to in clause 6.2, then either party may submit the matters in dispute to the decision of a single independent chartered accountant or an independent firm of chartered accountants to be agreed upon between the Purchaser and the Vendors or, in default of such agreement, to be selected (at the instance of either the Purchaser or the Vendors) by the President for the time being of the Institute of Chartered Accountants in England and Wales, and any such accountant or firm (whose costs shall be paid as he or they shall direct) shall act as experts (and not as arbitrators) in connection with the giving of such decision which shall, except in the event of manifest error, be binding on the Purchaser and the Vendors. In giving such decision, the accountant or firm shall state the adjustments (if any) to be made to the draft Completion

Accounts. The Vendors and the Purchaser shall act in good faith towards each other regarding such application and shall with reasonable expedition endeavour to agree any terms of reference of the independent accountant or procedures relating to the determination of the independent accountant. In default of agreement relating to the terms of reference of the independent accountant within 10 Business Days of either party making time of the essence, the independent accountant shall determine his own terms of reference and the procedures to be applied relating to the determination of any dispute between the parties pursuant to this clause. The cost of such determination shall be determined by the independent accountant.

- 6.4 The form of Completion Accounts agreed between the Vendors' Accountants and the Purchaser's Accountants, or as adjusted by the independent accountants, as the case may be, shall be the Completion Accounts for the purposes of this Agreement and shall be final and binding on the Purchaser and the Vendor.
- 6.5 When the Completion Accounts have been agreed or determined in accordance with this clause 6, to the extent the Net Asset Value is less than £220,000 the Vendors jointly and severally agree to release to the Purchaser from the Escrow Account (or pay to the Purchaser to the extent that the shortfall exceeds the Escrow Account) in the Agreed Proportions within five Business Days of such agreement or determination the amount of such shortfall, on the basis of £1 for every £1 by which the actual amount or value of such net assets is less than such amount and the Purchaser agrees to the Release to the Vendors (in the Agreed Proportions) at the same time the remaining balance standing to the credit of the Escrow Account.
- 6.6 The Purchaser, the Company and the Vendors shall all use their respective reasonable endeavours to issue invoices, and collect amounts owing, in respect of the Proposed Debtors and Debtors, and shall co-operate in so doing. The Vendors shall procure that copies of such invoices are sent to the Purchaser as soon as reasonably practicable.
- 6.7 The Vendors hereby warrant and undertake to the purchaser that all receivables included in the Completion Accounts are recoverable in the ordinary course. The parties agree that after Completion they will monitor and consult with each other in respect of any receivable that the Purchaser believes is overdue. To the extent that such receivables are not recovered within 12 months of Completion and the Net Asset Value is thereby reduced to less than £220,000 (after allowing for disregards) the Vendors shall reimburse the Purchase £ for £ the amount by which such non-recovered receivables have reduced the Net Asset Value to less than £220,000. The Purchaser will credit to the Vendors (in the Agreed Proportions) £ for £ any sums reimbursed to the Purchaser in relation to the foregoing provisions but which relate to receivables which are subsequently recovered albeit outwith the 12 month period.

## **7 Warranties and indemnities**

- 7.1 The Vendors acknowledge that the Purchaser has been induced to enter into this Agreement and to purchase the Shares on the basis of and in reliance upon the Warranties.
- 7.2.1 The Vendors jointly and severally warrant to the Purchaser that each and every Warranty is true, correct, accurate and not misleading at the date of this Agreement, subject only to:
- (a) the matters specifically referred to in the Disclosure Documents, provided that:
    - (i) such matters will be treated as qualifying or limiting the application of any Warranty only to the extent that such disclosure is fair; and
    - (ii) no qualification or limitation shall be possible or effective in relation to the Warranties contained in paragraphs 1.1, 1.2 and/or 1.3 of Schedule 6 (the Shares); and
  - (b) any exceptions for which express provision is made pursuant to this Agreement

- (c) the warranty given in paragraph 9.16 of Schedule 6 being given by the Vendors on a several basis as set out therein.
- 7.2.2 The Purchaser warrants to the Vendors that as at Completion it is not aware of any breach of the Warranties by the Vendors.
- 7.3 Each Warranty is a separate and independent warranty and, except as otherwise expressly provided, no Warranty shall be limited by reference to any other Warranty or by the other terms of this Agreement, the Disclosure Documents or the Tax Deed.
- 7.4 The liability of the Vendors in respect of any claim under the Warranties shall be limited as provided in Schedule 7 except:
- (a) in the case of a breach of the Warranties contained in paragraph 1 of Schedule 6 (the Shares); or
  - (b) in relation to any claim which arises out of any fraud, dishonesty, wilful misstatement or wilful non-disclosure by or on behalf of any of the Vendors.
- 7.5 Subject as provided in clause 7.4, the provisions of Schedule 7 which, among other things, regulate or otherwise affect the liability of the Vendors shall remain in full force and be fully applicable in all circumstances and, in particular, notwithstanding any breach of the Warranties or any claim against the Vendors in respect of the Warranties or the Tax Deed, whatever its nature or consequences.
- 7.6 Other than in relation to the Disclosed Documents, the rights and remedies of the Purchaser in respect of any breach of the Warranties shall not be affected by Completion, by any investigation made by or on behalf of the Purchaser into the affairs of the Company, or by any other event or matter whatsoever which otherwise might have affected such rights and remedies except a specific and duly authorised written waiver or release. No information relating to the Company of which the Purchaser has knowledge (actual or constructive) other than by reason of its being disclosed in accordance with clause 7.2(a)(i) shall prejudice any claim which the Purchaser shall be entitled to bring or shall operate to reduce any amount recoverable by the Purchaser under this Agreement.
- 7.7 Any information supplied by the Company, its officers, employees or agents to any of the Vendors, their agents, representatives or advisers in connection with, or to form the basis of, the Warranties or the Tax Deed or any matter covered in the Disclosure Documents, or for any other reason, shall be deemed not to include or have included a representation, warranty or guarantee of its accuracy to the Vendors and shall not constitute a defence to any of the Vendors to any claim made by the Purchaser. The Vendors hereby waive any and all claims against the Company, its officers or employees in respect of any information so supplied (and undertake that no other person claiming under or through them will make any such claim).
- 7.8 References to the awareness or knowledge of the Vendors in a Warranty in Schedule 6 shall only limit that Warranty by the Vendors' awareness or knowledge if the Vendors have made all due and careful enquiries of each other to ascertain if the relevant information is true, accurate, correct and not misleading.
- 7.9 Each of the paragraphs in Schedule 6 shall be interpreted as being deemed to include all references to the foreign equivalent of terms used, statutes and regulations referred to and concepts applied where the Company is incorporated in, does business in or is affected by the laws or regulations of a country outside England and Wales.
- 7.10 In determining damages for any breach of the Warranties or any other provision of this Agreement, the Purchaser shall not be required to cause the Company to be wound up or to rely on the limited



liability of any company in mitigation of its loss, but shall be deemed for this purpose to be under a duty to maintain the Company as a going concern and to make good any deficiency in its assets.

- 7.11 The Purchaser shall be entitled, without prejudice to any other rights or remedies available to it, to:
- (a) at its election set off against the Consideration due to the Vendors pursuant to clause 3.1 any amounts due to it from the Vendors in respect of any Determined Claims but only in the manner hereinafter provided and for this purpose the Vendors grant to the Purchaser:
    - (i) a right to not issue a corresponding number of Consideration Shares pursuant to clause 3.1;; and
    - (ii) only after the provision for the issue of Consideration Shares has been exhausted an express contractual right to set off any such amounts due against a corresponding principal amount of the Loan Notes held by them in respect of any such Determined Claims (which Loan Notes would then be deemed satisfied); and
  - (b) in respect of any other claims under this Agreement or the Tax Deed, withhold payment, or direct the withholding of payment, of such amount of the Consideration due to the Vendors pursuant to clause 3.1 (and for this purpose the Purchaser shall be entitled temporarily to withhold payment of a corresponding principal amount repayable under the Loan Notes and/or issue of a corresponding amount of Consideration Shares) as shall be equal to the Purchaser's reasonable and bona fide estimate of the value of the claim (provided that if the Vendors shall so request in writing, the Purchaser shall obtain and provide an opinion of Queen's Counsel that the grounds for the claim are reasonable and that its estimate of the value of the claim is reasonable or, if not, the amount which would be a reasonable estimate of the value of the claim which shall then be the amount (if any) the Purchaser shall be entitled to withhold under this clause 7.11(b) in respect of such claim); any withholding of payment of Consideration pursuant to this clause 7.11(b) shall continue until such time as the claims in respect of which the withholding is made ("the Withholding Claims") shall have become Determined Claims, whereupon the provisions of clause 7.12 shall apply.
- 7.12 Upon a Withholding Claim becoming a Determined Claim:
- (a) to the extent that the determination and/or agreement in relation to the claim has been made in whole or part in favour of the Purchaser, then at the Purchaser's election:
    - (i) to the extent not set off pursuant to clause 7.11(a)(i), all or part of such amount shall be set off against the Purchaser's obligation to issue a corresponding amount of Consideration Shares; and
    - (ii) only after the provision for the issue of Consideration Shares has been exhausted to the extent not set off pursuant to clause 7.11(a)(ii), all or part of such amount shall be set off against a corresponding principal amount of the Loan Notes held by them which Loan Notes would then be deemed satisfied,and the Purchaser shall be entitled to recover from the Vendors such amount of the claim as shall not have been set off against the Consideration Shares and/or Loan Notes as aforesaid; and
  - (b) to the extent that the determination and/or agreement in relation to the claim has been made in whole or part in favour of the Vendors, or the claim has been withdrawn by the Purchaser, then the balance withheld shall cease to be so withheld, and (i) any amounts that would otherwise have already been paid (whether pursuant to the provisions of

clause 3.1 or the Loan Note Instrument) or (ii) Consideration Shares that would otherwise have already been issued pursuant to the provisions of clause 3.1 (but for the operation of clause 7.11) shall be paid or issued (as the case may be) to the Vendors.

7.13 On the Purchaser exercising its right of set-off against the Loan Notes pursuant to clause 7.11(a), the amount which is set-off by the Purchaser shall result in the equivalent principal amount of Loan Notes being deemed to have been satisfied by the Purchaser. A Vendor whose Loan Notes are set off and satisfied pursuant to this clause 7 shall, upon being notified by the Purchaser, be required to surrender his certificate(s) for the Loan Notes to the Purchaser, against the issue (if applicable) by the Purchaser of a new certificate to the Vendor for the balance (if any) of the Loan Notes not deemed satisfied. On the Purchaser exercising its right to set off pursuant to clause 7.11(a) or 7.12(a) against its obligation to issue Consideration Shares pursuant to clause 3.1, its obligation to issue such number of Consideration Shares shall cease and determine.

7.14 For the avoidance of doubt:

- (a) any interest accruing on the principal amounts of the Loan Notes shall not continue to be paid on the amount of the principal of the Loan Notes withheld pursuant to clause 7.11(b) above prior to the Withholding Claim being agreed or finally determined but if and to the extent that following such agreement or final determination such Loan Notes cease to be withheld and are not set off such interest shall be paid at the rate payable under the Loan Notes (compounded on a quarterly basis) in respect of the period of such withholding on the next interest payment date under the Loan Note Instrument or, if earlier, on repayment of the relevant principal amount of the Loan Notes; and
- (b) as between the Vendors, any set-off pursuant to clauses 7.11(a) or 7.12(a) and any withholding of payment of principal amounts of Loan Notes pursuant to clause 7.11(b) above shall apply in the Agreed Proportions.

7.15 Special Indemnity

Dermot Smith agrees to indemnify the Purchaser and/or the Company from and against all liability, costs or damages that may arise by reason of the termination by the Company (or otherwise) of the employment of Lynn Smith upon or prior to the signing hereof

## **8 Protection of Goodwill**

8.1 As further consideration for the Purchaser agreeing to purchase the Shares on the terms contained in this Agreement and with the intent of assuring to the Purchaser the full benefit and value of the goodwill and connections of the Company and as a constituent part of the sale of the Shares, each Vendor hereby undertakes (binding himself and each of his Affiliates) to the Purchaser (contracting for itself and as trustee for the Company) that (except as an employee or director of the Company or with the written consent of the Purchaser) neither he nor his Affiliates shall, whether on their own behalf or with or on behalf of any person and whether directly or indirectly by any person or business controlled by them or any Connected Person:

- (a) at any time prior to the third anniversary of Completion carry on or be employed, engaged, concerned, interested or in any way assist in any business which may be in direct competition with all or part of the Business in the Restricted Territory provided that nothing in this clause 8.1(a) shall prevent the Vendor from holding for investment purposes only any units of an authorised unit trust and/or not more than three per cent (3%) of any class of the issued share or loan capital of any company quoted on a recognised investment exchange (as defined in FISMA);

- (b) at any time prior to the third anniversary of Completion have any dealings with, canvass, solicit or approach or cause to be canvassed, solicited or approached (on behalf of a business which may compete directly with all or part of the Business) any person who at any time during the 12 months preceding the date on which Completion takes place shall have been a client, customer, supplier, distributor or agent of or to the Company;
- (c) at any time prior to the third anniversary of Completion interfere or seek to interfere or take such steps as may interfere with supplies to the Company from any suppliers who shall have been supplying goods, products or services to the Company for use in connection with the Business at any time during the period of 12 months preceding the date on which Completion takes place;
- (d) at any time prior to the third anniversary of Completion offer employment to or employ or offer to conclude any contract of services with any Key Employee or procure or facilitate the making of such an offer by any person, firm or company or entice or endeavour to entice any Key Employee to terminate their employment or contract for services with the Company; or
- (e) at any time after Completion disclose to any person whatsoever or use to the detriment of the Company or otherwise make use of, or through any failure to exercise all due care and diligence cause any unauthorised use of, any Confidential Information obtained or received as a result (directly or indirectly) of negotiating, entering into or performing this Agreement or any Commercial Information or Business IP relating or belonging to the Company or in respect of which the Company is bound by an obligation of confidence to a third party, except as required by the Stock Exchange, the UKLA or by law or by any court of competent jurisdiction (in which case, the Purchaser shall be given reasonable advance notice of any such required disclosure).

Each undertaking contained in this clause 8.1 shall be read and construed independently of the other undertakings herein as an entirely separate and severable undertaking.

- 8.2 The Vendors agree that they shall not at any time carry on or be employed, engaged, concerned, interested or in any way assist in any business which uses the name "Campbell & Co" or any name which is likely to be confused with such name or might imply any ongoing connection with the Company.
- 8.3 The parties hereby confirm and agree that they consider that the undertakings in clauses 8.1 and 8.2:
  - (a) are reasonable in all the circumstances;
  - (b) are of no greater duration, extent and application than is necessary for the protection of the goodwill of the businesses of the Company; and
  - (c) have been taken into account in determining, and are adequately compensated for by, the amount of the consideration payable by the Purchaser for the Shares pursuant to this Agreement.
- 8.4 If any one or more of such undertakings should for any reason be held to be invalid but would have been held to be valid if part of the wording thereof was deleted or the period thereof reduced or the range of activities or area covered thereby reduced in scope, the said undertakings shall apply with the minimum modifications necessary to make them valid and effective.
- 8.5 The restriction contained in clause 8.1(e) shall not extend to any confidential or secret information which may come into the public domain otherwise than through the default of, or other wrongful disclosure by, any of the Vendors.

- 8.6 The parties agree that the benefit of the covenants and undertakings given in this clause 8 shall be assignable in whole or in part by the Purchaser to and become enforceable by the Company and any subsidiary or holding company of the Company or the Purchaser which from time to time is the *holder of the Shares*; it being a condition of such assignment that the assignee provides confirmation directly to the Vendors that it shall be bound by the terms of clause 8.7 below.
- 8.7 If prior to the third anniversary of the date on which Completion takes place a Vendor (or any of them) shall intimate to the Purchaser that he wishes to cease to be an employee of the Purchaser or one of its Affiliates and would on such departure be a Good Leaver then the Purchaser (or any party to whom the Purchaser shall have assigned its interest in terms of clause 8.6) shall not unreasonably withhold or delay its approval to an application by such Vendor for a reduction in his Restricted Period and/or of his Restricted Territory in clause 8.1(a) and within such context to permit such Vendor to have limited "dealings" with former clients in relaxation of clause 8.1(b).

## **9 Restrictions on sale of the Consideration Shares**

- 9.1 Each Vendor severally undertakes to and agrees with the Purchaser that, except with the prior written consent of the Purchaser, he and his Connected Persons shall not, at any time during each of the one-year periods commencing on each allotment of Consideration Shares to be issued to him pursuant to clauses 3.1(c), 3.1(d) or 3.1(e), directly or indirectly dispose of or grant any option over or enter into any agreement or arrangement to dispose of or grant any option over all or any of the Consideration Shares which he holds or owns pursuant to each such allotment.
- 9.2 The restrictions contained in this clause 9 shall not prohibit any Vendor from:
- (a) *disposing of or agreeing or irrevocably undertaking to sell or dispose of their Consideration Shares (conditionally or otherwise) to any offeror contingent upon a general offer being made to all shareholders of the Purchaser (or to all such shareholders other than the offeror and/or persons associated or acting in concert with the offeror in respect of such offer) for all the ordinary shares in the capital of the Purchaser which is recommended by the Purchaser's Directors, or pursuant to acceptance of such an offer; or*
  - (b) disposing of or agreeing to dispose of their Consideration Shares to a person who is a Connected Person provided that such Connected Person has first agreed by deed, in terms reasonably satisfactory to the Purchaser, to be bound by the same restrictions as above; or
  - (c) disposing of or agreeing to dispose of their Consideration Shares pursuant to an intervening Court order ;or
  - (d) disposing of their Consideration Shares when they are a Good Leaver; or
  - (e) disposing of their Consideration Shares following their death

## **10 Release of guarantees**

To the extent that they are not released on Completion, the Vendors shall use their best endeavours to procure as soon as practicable after Completion the release of the Company from all guarantees, claims, indemnities, contracts of suretyship and third party charges given in respect of the liabilities of any member of the Vendors' Group, and agree with the Purchaser for itself and as trustee for the Company that, pending such release, they shall indemnify and keep indemnified the Purchaser and the Company against any and all Losses brought or established against them in connection with or as a result of those commitments after Completion. Without prejudice to the generality of the foregoing provision, the Purchasers shall, following Completion, advance sufficient funds to the Company for this purpose.

## **11 Announcements**

11.1 No press conference, announcement or other communication concerning Confidential Information or the transactions referred to in this Agreement, or in connection with the Company or otherwise relating to the financial condition or trading or financial prospects of the Company, shall be made or despatched by the Vendors or their agents, employees or advisers to any third party without the prior written consent of the Purchaser, except as may be required by:

- (a) any law; or
- (b) the Stock Exchange, the UKLA or the Panel on Takeovers and Mergers or any applicable regulatory authority to which the Vendors are subject where such requirement has the force of law;

but provided any such communication shall be made only after consultation with the Purchaser.

11.2 The restrictions contained in this clause 11 shall continue to apply after Completion without limit in time.

11.3 The Purchaser and the Vendors undertake to provide all such information known to them, or which on reasonable enquiry ought to be known to them, as may reasonably be required by the other in relation to the Company or any of them for the purpose of complying with the requirements of law or of the Stock Exchange, the UKLA or the Panel on Takeovers and Mergers or of any applicable regulatory authority to which any of the parties is subject where such requirement has the force of law.

## **12 General**

12.1 Implied Covenants for Title

LPMPA shall apply to any disposition of property made under or pursuant to this Agreement as though such disposition were expressed to be made with full title guarantee, except that:

- (a) the word "reasonably" shall be deleted from the covenant set out in section 2(1)(b) LPMPA;
- (b) the covenant set out in section 3(1) LPMPA shall not be qualified by the words "other than any charges, encumbrances or rights which that person does not and could not reasonably be expected to know about"; and
- (c) Section 6(2) LPMPA shall not apply to any of the covenants (express or implied) deemed to be given in respect of such dispositions.

12.2 Further Assurance

12.2.1 In addition to clause 12.1, the Vendors, from time to time on or following Completion on being required to do so by the Purchaser and at the cost and expense of the Vendors, shall do or procure the doing of all such acts and/or execute or procure the execution of all such documents in a form satisfactory to the Purchaser as the Purchaser may reasonably consider necessary for giving full effect to this Agreement and securing to the Purchaser the full benefit of the rights, powers and remedies conferred upon the Purchaser in this Agreement.

12.2.2 The Vendors respectively hereby irrevocably and unconditionally appoint the Purchaser with effect on and from Completion as his attorney with full powers of substitution in its name and for it and on his behalf (and to the complete exclusion of any rights it may have in such regard) lawfully to exercise all voting and other rights and receive all the benefits and entitlements which may now or at any time hereafter attach to the Shares.

### 12.3 Assignment

12.3.1 Except as specifically contemplated by this Agreement (including as contemplated by clause 12.5), no party may assign the benefit of this Agreement whether absolutely or by way of security except that:

(a) the Purchaser may make an absolute assignment (including for the avoidance of doubt the benefit of the Warranties) to an Affiliate of the Purchaser, provided that if such transferee ceases to be an Affiliate, the Purchaser shall use its best endeavours to procure that the benefit of this Agreement is re-assigned to it by such Affiliate and that the Purchaser shall not be released as a result of such assignments from its obligation to pay and satisfy the Consideration; and

(b) a party may assign such benefit absolutely or by way of security to a person (other than to an Affiliate of the Purchaser as aforesaid) with the prior consent in writing of the other parties, such consent not to be unreasonably withheld or delayed.

Any purported assignment in contravention of this clause 12.3.1 shall be ineffective.

12.3.2 Subject to clause 12.3.1, this Agreement shall be binding upon and enure for the benefit of the personal representatives and assigns and successors in title of each of the parties and references to the parties shall be construed accordingly.

### 12.4 Entire Agreement

12.4.1 The Contractual Documents constitute the whole and only agreement between the parties relating to the subject matter hereof and supersede and extinguish any prior drafts, previous agreements, undertakings, representations, warranties and arrangements of any nature whatsoever, whether or not in writing between the parties, in connection with the subject matter hereof. No party has entered into this Agreement in reliance on, and each party unconditionally waives any claims in relation to, any statement, representation, warranty or undertaking which is not expressly set out or referred to in this Agreement or the Disclosed Documents.

12.4.2 The rights of the Purchaser under this Agreement are independent, cumulative and without prejudice to all other rights available to it whether as a matter of common law, statute, custom or otherwise.

12.4.3 Nothing in this Agreement, the Tax Deed or in any other document referred to herein shall be read or construed as excluding any liability or remedy as a result of fraud.

### 12.5 Waiver, Variation and Release

12.5.1 No omission to exercise or delay in exercising on the part of any party to this Agreement any right, power or remedy provided by law or under this Agreement shall constitute a waiver of such right, power or remedy or any other right, power or remedy or impair such right, power or remedy. No single or partial exercise of any such right, power or remedy shall preclude or impair any other or further exercise thereof or the exercise of any other right, power or remedy provided by law or under this Agreement.

12.5.2 Any waiver of any right, power or remedy under this Agreement must be in writing and may be given subject to any conditions thought fit by the grantor. Unless otherwise expressly stated, any waiver shall be effective only in the instance and only for the purpose for which it is given.

12.5.3 No variation to this Agreement shall be of any effect unless it is agreed in writing and signed by or on behalf of each party.

12.6 Costs and Expenses

12.6.1 Except as otherwise stated in this Agreement, each party shall pay its own costs and expenses in relation to the negotiation, preparation, execution and carrying into effect of this Agreement and other agreements forming part of the transaction.

12.7 Withholding

12.7.1 Subject as provided in clause 7, all sums payable by the Vendors to any person pursuant to this Agreement shall be paid free of any rights of counterclaim or set off and without any deductions or withholdings whatsoever, save only as may be required by any applicable law.

12.8 Notices

12.8.1 Any communication to be given in connection with the matters contemplated by this Agreement shall be in writing except where expressly provided otherwise and shall either be delivered by hand or sent by first class pre-paid post or facsimile transmission or by electronic mail. Delivery by courier shall be regarded as delivery by hand.

12.8.2 Such communication shall be sent, in respect of the Vendors, to the address set out against their respective names in column 4 of Schedule 2 and, in respect of the Purchaser, to the address set out on page 1 of this Agreement, or the facsimile number or electronic mail address set out below, or to such other address or facsimile number or electronic mail address as may previously have been communicated to the other parties in accordance with this clause 12.8.2 and clause 12.8.5. Each communication shall be marked for the attention of the relevant person.

The Vendors

The Purchaser

(Fax Number: 020 7637 1074)

(Email address:  
howardg@mcglex.co.uk)

12.8.3 A communication shall be deemed to have been served:

- (a) if delivered by hand at the address referred to in clause 12.8.2, at the time of delivery;
- (b) if sent by first class pre-paid post to the address referred to in clause 12.8.2, at the expiration of two clear days after the time of posting; and
- (c) if sent by facsimile to the number referred to in clause 12.8.2 or sent by electronic mail to the email address specified in that clause, at the time of completion of transmission by the sender.

If a communication would otherwise be deemed to have been delivered outside normal business hours (being 9:30 a.m. to 5:30 p.m. on a Business Day) under the preceding provisions of this clause 12.8.3, it shall be deemed to have been delivered at the next opening of such business hours.

12.8.4 In proving service of the communication, it shall be sufficient to show that delivery by hand was made or that the envelope containing the communication was properly addressed and posted as a first class pre-paid letter or that the facsimile was despatched and a confirmatory transmission report received or that the electronic mail was transmitted to the correct email address, whether or not opened or read by the recipient.

- 12.8.5 A party may notify the other parties to this Agreement of a change to its name, relevant person, address, facsimile number or electronic mail address for the purposes of clause 12.8.2 provided that such notification shall only be effective on:
- (a) the date specified in the notification as the date on which the change is to take place; or
  - (b) if no date is specified or the date specified is less than five clear Business Days after the date on which notice is deemed to have been served, the date falling five clear Business Days after notice of any such change is deemed to have been given.
- 12.8.6 For the avoidance of doubt, the parties agree that the provisions of clauses 12.8.1, 12.8.2, 12.8.3, 12.8.4 and 12.8.5 shall not apply in relation to the service of any claim form, application notice, order, judgement or other document relating to or in connection with any proceeding, suit or action arising out of or in connection with this Agreement.
- 12.9 Counterparts
- 12.9.1 This Agreement may be executed in any number of counterparts (whether original or facsimile) and by the parties on different counterparts, but shall not be effective until each party has executed at least one counterpart.
- 12.9.2 Each counterpart shall constitute an original of this Agreement but all the counterparts shall together constitute one and the same agreement.
- 12.10 Language
- 12.10.1 This Agreement is drawn up in the English language. If this Agreement is translated into any language other than English, the English language text shall prevail.
- 12.10.2 Each notice, instrument, certificate or other communication to be given by one party to another hereunder or in connection with this Agreement shall be in the English language (being the language of negotiation of this Agreement) and in the event that such notice, instrument, certificate or other communication or this Agreement is translated into any other language, the English language text shall prevail.
- 12.11 Severability
- Each of the provisions of this Agreement is severable. If any such provision is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, the legality, validity or enforceability in that jurisdiction of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby.
- 12.12 Effect of Completion
- This Agreement together with the Tax Deed shall, to the extent that it remains to be performed, continue in full force and effect notwithstanding Completion.
- 12.13 Confidentiality
- 12.13.1 The Vendors hereby undertake with the Purchaser that they shall both during and after the term of this Agreement preserve the confidentiality of, and not directly or indirectly reveal, report, publish, disclose or transfer or use for its own or any other purposes, Confidential Information except:
- (a) in the circumstances set out in clause 12.13.2 below;
  - (b) to the extent otherwise expressly permitted by this Agreement; or
  - (c) with the prior consent in writing of the party to whose affairs such Confidential Information relates.
- 12.13.2 The circumstances referred to in clause 12.13.1(a) above are:



- (a) where the Confidential Information, when it was first known to any of the Vendors, was in the public domain;
- (b) where the Confidential Information, after it was first known to the Vendors, enters the public domain otherwise than as a result of (i) a breach by any of the Vendors of their obligations in clause 12.13.1 or (ii) a breach by the person who disclosed that Confidential Information of a confidentiality obligation and the Vendor in question is aware of such breach; or
- (c) if and to the extent the Vendors make disclosure of the Confidential Information to any person:
  - (i) in compliance with any requirement of law;
  - (ii) in response to a requirement of the Stock Exchange, the UKLA or the Panel on Takeovers and Mergers or any applicable regulatory authority to which the Vendors are subject where such requirement has the force of law; or
  - (iii) in order to obtain tax or other clearances or consents from the Inland Revenue or other relevant taxing or regulatory authorities.

12.13.3 Any such information disclosable pursuant to clause 12.13.2(c)(i), 12.13.2(c)(ii) or 12.13.2(c)(iii) shall be disclosed only to the extent required by law and only after consultation with the Purchaser.

12.13.4 The restrictions contained in clause 12.12.1 shall continue to apply after Completion without limit in time.

#### 12.14 Joint and several liability

Except in terms of clause 8 and where expressed to the contrary, the liability of the Vendors under this Agreement shall be joint and several.

#### 12.15 Governing Law and Jurisdiction

12.15.1 This Agreement shall be governed by and construed in accordance with English law.

12.15.2 The parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Agreement in respect of any claim brought against the Purchaser and shall have non-exclusive jurisdiction in respect of claims brought by the Purchaser.

## **SCHEDULE 1**

### **Part I**

#### **Particulars of the Company**

Name	Campbell & Co (Consultant Surveyors) Limited
Number	SC233594
Date of registration	02/07/2002
Status	Private Limited company
Place of registration	Edinburgh
Registered Office	Citypoint 2, 25 Tyndrum Street, Glasgow G4 0JY
Authorised share capital	£100,000
Issued share capital	£99,999
Charges	Floating Charge in favour of The Royal Bank of Scotland plc dated 3 <sup>rd</sup> April 2003
Directors	Tom Johnston, Mike Simpson, Dermit Smith, Colin Dalkin, Nick McCaffery and Andrew Wright
Secretary	Dermit Smith
Auditors	Hardie Caldwell, Citypoint 2, 25 Tyndrum Street, Glasgow G4 0JY

## **SCHEDULE 1**

### **Part II**

#### **Particulars of the Subsidiaries**

Name	Tomide Limited
Number	SC091289
Date of registration	18/01/1985
Status	Private limited company
Place of registration	Edinburgh
Registered Office	Citypoint 2, 25 Tyndrum Street, Glasgow G4 0JY
Authorised share capital	£500,000
Issued share capital	£18,289
Charges	(1) Standard Security in favour of The Royal Bank of Scotland plc over 23 Royal Exchange Square, Glasgow (Title numbers GLA 40872 and GLA64853), (2) Floating Charge in favour of The Royal Bank of Scotland plc dated 3 <sup>rd</sup> April 2003
Directors	Tom Johnston, Mike Simpson, Dermit Smith, Colin Dalkin, and Nick McCaffery
Secretary	Tom Johnston
Auditors	Hardie Caldwell, Citypoint 2, 25 Tyndrum Street, Glasgow G4 0JY

Name	Peter Campbell & Co (Management) Limited
Number	SC086624
Date of registration	09/02/1984
Status	Private limited company
Place of registration	Edinburgh
Registered Office	Citypoint 2, 25 Tyndrum Street, Glasgow G4 0JY
Authorised share capital	£100,000
Issued share capital	£100
Charges	None
Directors	Tom Johnston, Mike Simpson, Dermit Smith
Secretary	Tom Johnston
Auditors	Hardie Caldwell, Citypoint 2, 25 Tyndrum Street, Glasgow G4 0JY

Name	Peter Campbell & Co Limited
Number	SC070337
Date of registration	04/01/1980
Status	Private company
Place of registration	Edinburgh
Registered Office	Citypoint 2, 25 Tyndrum Street, Glasgow G4 0JY
Authorised share capital	£100
Issued share capital	£100
Charges	None
Directors	Tom Johnston, Mike Simpson, Dermit Smith
Secretary	Tom Johnston
Auditors	Hardie Caldwell, Citypoint 2, 25 Tyndrum Street, Glasgow G4 0JY

## **SCHEDULE 2**

### **The Vendors**

<b>Vendor</b>	<b>Number of ordinary shares held in the Company</b>	<b>Agreed Proportion (%)</b>	<b>Address</b>
Thomas James Johnston	33,333 A	33.334	Arthurlie, Gryffe Road, Bridge of Weir, PA11 3AL, Scotland
Michael Campbell Simpson	33,333 B	33.333	Sherwood, Prieston Road, Bridge of Weir, PA11 3AW, Scotland
Dermot Shaw Smith	33,333 C	33.333	17 Alexandra Road, Lenzie, G66 5BA, Scotland

### **SCHEDULE 3**

#### **Documents to be delivered on Completion**

- 1 Transfers in respect of the Shares duly executed by the registered holders thereof in favour of the Purchaser or as it may direct and duly executed by the registered holders thereof in favour Purchaser of the Vendor Loan Notes
- 2 Certificates for the Shares and Vendor Loan Notes and any other documents which may be required to give good title to the Shares and Vendor Loan Notes and to enable the Purchaser to procure registration of the same in its name or as it may direct.
- 3 The Tax Deed duly executed by each of the Vendors.
- 4 Acknowledgements in the agreed form from each of the Vendors and the Company confirming that at and immediately after Completion nothing is owing nor are there any outstanding claims between the Company on the one hand and each of the Vendors on the other and, to the extent that there are possible claims, then these have been waived.
- 5 Cheque books in respect of all bank accounts operated by the Company together with bank statements drawn up to the preceding day relating to such accounts.
- 6 In relation to the Company, the certificate of incorporation, certificates of incorporation on change of name (if applicable), common seals, statutory registers, minute books, share certificate books, books of account (in whatever form) and all other books (all duly written up to date).
- 7 All title deeds and documents relating to the Property – in so far as the same are not held by The Royal Bank of Scotland plc as holders of a Standard Security.
- 8 The Service Agreements duly executed by each of the Vendors, Colin Dalkin and Nick McCaffery.
- 9 Resignations of the directors and company secretary and (undated) the auditors of the Company and Subsidiaries in a form approved by the Purchaser.
- 10 Appointments of David Izett and Tom Tidy as directors, and of Howard Goldsobel as company secretary, and Baker Tilly as auditors, of the Company and Subsidiaries, in a form approved by the Purchaser.
- 11 Certified copies of board resolutions of the Company in the agreed form:
  - (a) approving (subject only to proper stamping) the transfers of the Shares delivered under this Agreement;
  - (b) approving the placing on the register of members of the Company of the names of the transferees for registration in accordance with the share transfer forms referred to above and authorising the issue of appropriate share certificates;
  - (c) revoking all existing authorities and adopting new bank mandates and changed authorities in respect of existing bank accounts operated by the Company in accordance with the directions of the Purchaser;
  - (d) approving the opening of such new bank accounts at such banks as the Purchaser shall nominate and the transfer of such funds to such new accounts from existing bank accounts of the Company as the Purchaser shall specify;
  - (e) changing the situation of the registered office of the Company to such place as the Purchaser may direct;

- (f) approving the execution of the Tax Deed; and
- (g) recording the resignations and appointments described in paragraphs 13 and 14 of this Schedule 3.

12. The share certificates in respect of the Subsidiaries.

## **SCHEDULE 4**

### **The Completion Accounts**

In preparing the Completion Accounts, the following policies shall be adopted.

- 1 The accounting bases and policies upon which the Completion Accounts are prepared (including period-end fee accrual) shall be consistent with the basis and policies upon which the Accounts are prepared.
- 2 Subject to paragraph 1 above, the Completion Accounts shall be prepared in accordance with the relevant requirements of the Companies Act 1985 and with generally accepted accounting principles.
- 3 No value shall be attributed to goodwill or any other intangible asset.
- 4 No value shall be attributed to any assets (including in particular any prepayment or debt) except to the extent that (following Completion) the Company will have the benefit of the same.
- 5 Full provision shall be made for all liabilities (including Taxation) of the Company as at Completion whether actual, contingent, quantified, disputed or otherwise (including specific identifiable provisions in respect of deferred taxation). Any deferred Taxation in respect of the value attributable to feuhold Property 23 Royal Exchange Square Glasgow shall be accrued at the full corporation tax rate.
- 6 Full provision shall be made for rebates or discounts that will fall due on the Company and fees/commissions that will become payable after Completion in respect of transactions which took place prior to Completion.
- 7 Full provision shall be made for all liabilities up to and including Completion (including any bad or doubtful debts).
- 8 For the avoidance of doubt, for the purposes of calculating the Net Asset Value, (i) the Property shall have an agreed value of £400,000 (ii) there shall be disregarded any diminution in the Net Asset Value because of the payment of professional fees incurred by the Company to a maximum of £50,000 including any irrecoverable VAT and (iii) there shall be disregarded the cost (not to exceed £30,000) paid by the Company to terminate the employment of Andrew Wright.



## SCHEDULE 5

### Provisions relating to the Consideration Shares

- 1 The provisions of this Schedule 5 shall apply to any Consideration payable by the Purchaser to the Vendors under clauses 3.1(c), 3.1(d) and 3.1(e).
- 2 If a Vendor:
- (a) terminates, or gives notice to terminate, his employment with the Company or any of its Affiliates other than:
    - (i) in accordance with clause 7 ("Notice Period") of his Service Agreement; or
    - (ii) as a result of long-term sickness or disability or death;
    - (iii) in circumstances constituting constructive dismissal; or
  - (b) becomes a Bad Leaver (as defined in paragraph 4 below);
- (any such Vendor being referred to as a "Departing Vendor") prior to the third anniversary of Completion, the Departing Vendor shall irrevocably cease to be entitled to receive any amount of his *Agreed Proportion of the Consideration as shall fall due for payment pursuant to clauses 3.1(c) and/or 3.1(d) and/or 3.1(e)* on, or at any time after, the date of termination or (if earlier) the date of notice of termination of employment (such date being referred to as "the Termination Date"), provided that for the avoidance of doubt the Departing Vendor shall be entitled to retain or, as the case may be, to be paid, his *Agreed Proportion of any Consideration* which has already been paid or which is due for payment prior to the Termination Date.
- 3 Any Consideration to which a Departing Vendor shall have ceased to be entitled in accordance with paragraph 2 of this Schedule 5 shall not be paid to any of the other Vendors and shall, so far as possible, be deemed to be a reduction in the overall Consideration paid for the Shares.
- 4 For the purposes of this Schedule, a "Bad Leaver" means any Departing Vendor whose employment has been terminated in circumstances in which he has:
- (a) committed any material breach or non-observance of any of his duties or any of his express or implied obligations arising from his employment with the Company or any of its Affiliates; or
  - (b) been grossly negligent in either carrying out, or in failing or refusing to carry out, any of his duties arising from his employment with the Company or any of its Affiliates; or
  - (c) committed any act of fraud or dishonesty (whether or not connected with his employment with the Company or any of its Affiliates) or committed any act of gross misconduct in the course of his employment; or
  - (d) been convicted of a criminal offence (excluding an offence under road traffic legislation in respect of which he is not sentenced to a term of imprisonment, whether immediate or suspended); or

## **SCHEDULE 6**

### **Warranties**

#### **1 The Shares and execution of this Agreement**

- 1.1 The Shares constitute the whole of the issued and allotted share capital of the Company and are fully paid or credited as fully paid and there are no options over or other rights (whether exercisable now or in the future and whether contingent or not) to acquire any shares or subscribe shares in the capital of the Company.
- 1.2 The Vendors are the legal and beneficial owners of the Shares and have full capacity and authority to sell them in accordance with the terms of this Agreement.
- 1.3 There is no pledge, lien, option, warrant, charge or encumbrance on, over or affecting any of the Shares, no agreement to create such pledge, lien, option, warrant, charge or encumbrance has been made and no claim has been made that any person is entitled to any such pledge, lien, charge or encumbrance.
- 1.4 No consent, approval, authorisation or order of any court or government or local agency or body or any other person is required by any of the Vendors or the Company for the execution or implementation of this Agreement and the documents in the agreed form and compliance with the terms of this Agreement and each of the documents in the agreed form does not and will not:
- (a) conflict with, result in the breach of or constitute a default under any obligation by which the Company may be bound or any provision of the Memorandum or Articles of Association of the Company;
  - (b) relieve any person from any material obligation to the Company or provide grounds for the termination by any party of any agreement with the Company or the cessation of any licence or permission; or
  - (c) result in the creation, imposition, crystallisation or enforcement of any encumbrance on any of the assets of the Company.

#### **2 Accuracy of information**

##### **2.1 Information in this Agreement**

The information contained or referred to in the Introduction and Schedule 1 (the Company) and Schedule 2 (the Vendors) is true, complete and accurate and not misleading, and the Company does not have and has never had any subsidiary or any associate (being a company which falls to be treated as such for the purposes of FRS 9).

##### **2.2 The Disclosure Documents**

All information contained or referred to in the Disclosure Documents is true, complete and accurate in all material respects.

#### **3 Compliance with laws and record keeping**

##### **3.1 Licences and Other Requirements**

All statutory, municipal, governmental, court and other requirements applicable to the formation, continuance in existence, creation and issue of securities, management, property or operations of the Company, and all licences and consents (including planning consents) involved in the carrying on of the business of the Company, have been obtained and complied with and the Vendors are not aware of any contemplated revocation of any such licence or consent.

### 3.2 Records

The records, statutory books and books of account of the Company are duly entered up and maintained in accordance with all legal requirements applicable thereto and contain true, full and accurate records of all matters required to be dealt with therein and all such books and all records are in its possession or under its control and all accounts, documents, returns and forms required to be delivered or made to the Registrar of Companies and any relevant foreign equivalent have been duly and correctly delivered or made.

### 3.3 Illegal Acts

The Company has not committed and is not liable for any criminal, illegal, unlawful, ultra vires or unauthorised act or statutory duty and there is no violation of, or default with respect to, any statute, regulation, order, decree or judgement of any court or central or local government agency of the United Kingdom or any foreign country

### 3.4 Ordinary Course of Business

Since the Company's incorporation it has not done any act or thing or engaged in any activity or incurred any debts and liabilities otherwise than in the ordinary course of the business carried on by it at the date of this Agreement.

### 3.5 Trading Name

The Company does not trade and has never traded under any name other than its corporate name and no action has been taken against the Company under Section 28 of the Companies Act 1985.

### 3.6 The Directors

- 3.6.1 None of the directors of the Company has been convicted of any criminal offence or been subject to any criminal proceedings (except convictions for, or proceedings relating to, minor motoring offences).
- 3.6.2 None of the directors of the Company has been subject to any order made under the Company Directors Disqualification Act 1986.
- 3.6.3 None of the directors of the Company has been censured by the UKLA, the Stock Exchange or any other recognised investment exchange (whether privately or publicly).
- 3.6.4 None of the directors of the Company has been declared bankrupt or entered into a voluntary arrangement with his/her creditors.

## 4 Capital, distributions, contracts and liabilities

### 4.1 The Company has not at any time:

- (a) repaid, redeemed or purchased or agreed to repay, redeem or purchase any securities or shares of any class of its share capital or otherwise reduced or agreed to reduce its issued share capital or any class thereof; or
- (b) directly or indirectly provided any financial assistance (as defined in Section 151 of the Companies Act 1985) for the purpose of the acquisition of shares of the Company or of any holding company of the Company or for the purpose of reducing or discharging any liability incurred in any such acquisition whether pursuant to Section 155 of the Companies Act 1985 or otherwise; or
- (c) capitalised or agreed to capitalise in the form of shares, debentures or any other securities or in paying up any amounts unpaid on any shares, debentures or other securities any profits or reserves of any class or description or passed or agreed to pass any resolutions to do so.

- 4.2 The Company has not received a distribution from any company in contravention of Section 263 or Section 264 of the Companies Act 1985.
- 4.3 There is no outstanding indebtedness or other liability (of whatsoever nature, whether present or future, actual or contingent) owing:
- (a) by the Company to any member of the Vendors' Group or to any director or former director of the Company or to any independent contractor providing the services of any such persons or to any person connected with the Company or with any member of the Vendors' Group or with any such director, former director or contractor; or
  - (b) to the Company by any member of the Vendor's Group or by any such director, former director or contractor or by any person connected with the Company or with any member of the Vendors' Group or with any such director, former director or contractor.
- 4.4 There are no existing contracts (including, without limitation, customer and supply contracts) to which the Company is a party and in which any member of the Vendors' Group or any director or shareholder of the Company or any person connected with any of them is interested (and for the purposes of this paragraph a person shall be deemed to be interested in a contract if, were he a director of the Company, he would be interested in that contract for the purposes of Section 317 of the Companies Act 1985).
- 4.5 No client of the Company was responsible for more than 10% of the Company's turnover in the most recently completed Financial Year.
- 4.6 Change of Control
- 4.6.1 So far as the Vendors are aware, as a result of the acquisition of the Shares by the Purchaser:
- (a) no material supplier of the Company will cease or reduce or be entitled to cease or reduce its supplies to the Company;
  - (b) no material customer of the Company will cease dealing with or reduce the level of business done with the Company; and
  - (c) no officer or senior employee of the Company will leave (other than as may be provided for in this Agreement)
- 4.7 Commissions
- No person is entitled to receive from the Company any finder's fee, brokerage or other commission in connection with the sale and purchase of the Shares.

## **5 Accounts**

- 5.1 The Accounts have been prepared in accordance with the Accounts Standards and give a true and fair view in accordance with the Accounts Standards of the state of affairs of the Company at the Accounts Date and of the profits and losses for the period concerned.
- 5.2 The Accounts make provisions which are in accordance with the Accounts Standards for or, in the case of actual liabilities, disclose or take into account in accordance with the Accounts Standards as at the Accounts Date:
- (a) all assets;
  - (b) all liabilities whether actual, contingent or disputed;
  - (c) all capital commitments whether actual or contingent; and
  - (d) all bad and doubtful debts.

- 5.3 Each of stock and work-in-progress was treated in the Accounts in accordance with SSAP 9. The policy of valuing stock and work-in-progress and the basis of depreciation and amortisation used in the Accounts is the same as was used in the audited balance sheets of the Company for the three previous consecutive accounting reference periods ending on the Accounts Date and the rate of depreciation of tangible fixed assets used in the Accounts by the Company for the three consecutive accounting periods ending on the Accounts Date is in accordance with SSAP 12 or FRS 15.
- 5.4 The combined profits (or losses) of the Company for the three consecutive periods ending on the Accounts Date as shown by the Accounts and by the audited accounts of the Company covering previous periods which have been delivered to the Purchaser, and the trend of profits (or losses) shown in all such accounts, has not (except as disclosed in such accounts) resulted from inconsistencies in accounting practices or the inclusion of exceptional or extraordinary items of income or expenditure (as those terms are defined in FRS 3) or from other such items which are not the results of continuing operations (as defined in FRS 3).
- 5.5 No debtor of the Company has exercised or has threatened to exercise any set-off (or other right of retention) or counter-claim.
- 5.6 The profits (or losses) shown in the Accounts have not to a material extent been affected (except as disclosed therein) by any extraordinary or exceptional event or circumstance or by any other factor rendering such profits unusually high or low.

5.7 **Management Accounts**

The Management Accounts have been prepared on a basis consistent with the Accounts and are not misleading.

**6 Trading since the Accounts Date**

6.1 Since the Accounts Date:

- (a) no members' resolution of the Company of any kind has been passed other than resolutions relating to business at annual general meetings which was not special business;
- (b) the Company has not carried on its business otherwise than in the ordinary course as regards the nature of the same and in a prudent manner and so as to maintain it as a going concern;
- (c) the Company has not acquired or disposed of or agreed to acquire or dispose of any business or any asset (other than trading stock in the ordinary course of business) or assumed or acquired any material liability (including any contingent liability) except at a value and on terms determined on an arm's length basis;
- (d) the Company has paid its creditors and collected from its debtors in accordance with its normal practice;
- (e) the Company's business and turnover (excluding seasonal variations) have not deteriorated or been adversely affected to a material extent by any act or omission of the Company or by the loss of any important employee, customer or supplier or by any abnormal factor and the Vendors are not aware of any facts or circumstances likely to give rise to any such loss or factor having or likely to have such effect;
- (f) no dividend or other distribution has been declared, made or paid to the members of the Company except as provided for in the Accounts and all dividends or distributions declared, made or paid by the Company have been made, paid or declared in

accordance with its Articles of Association and the provisions of any applicable legislation;

- (g) no change has been made in the emoluments or other terms of employment of any of the Company's employees who are in receipt of remuneration in excess of £25,000 per annum or of any of the Directors and the Company has not paid any bonus or special remuneration to any such employee or any Director;
- (h) no liability or contingent liability for Taxation has arisen otherwise than as a result of trading activities in the ordinary course of business;
- (i) all amounts received by the Company have been paid into the relevant bank account and appear in the appropriate books of account;
- (j) the Company has not repaid any loan, loan capital or other debenture by reason of its default;
- (k) no debtor has been released by the Company for less than the book value of any debt and no debt owing to the Company has been deferred, subordinated or written off or has proved to be irrecoverable to any extent; and
- (l) no material commission has been paid and no material discount has been allowed by the Company at a rate or otherwise on terms different from those upon which commissions and discounts were paid or allowed for in the accounting period ended on the Accounts Date.

## **7 Assets, stock and insurance**

### **7.1 Ownership of Assets**

All the Company's assets and all debts due to it which are included in the Accounts or have otherwise been represented as being at the Accounts Date its property or due to it or used or held for the purposes of its business were at the Accounts Date its absolute property and (except for those subsequently disposed of or realised in the ordinary course of the business carried on by it) all such assets and debts and all assets and debts which have subsequently been acquired or arisen are now its absolute property and in its possession and control and none is the subject of any encumbrance (excepting only liens arising in the normal course of trading) or the subject of any leasing, hire, hire-purchase, retention of title, conditional sale or credit sale agreement.

### **7.2 Motor Vehicles**

The Company owns or has on lease or hire purchase (as referred to) the motor vehicles the make, model, registration number and driver of which are set out opposite its name in the list included in the Disclosure Documents.

### **7.3 Maintenance Contracts**

Maintenance contracts are in full force and effect in respect of all assets which the Company is obliged to maintain or repair under any leasing or similar agreement and in respect of all assets which it is necessary to have maintained by outside or specialist contractors.

### **7.4 Defective Services**

So far as the Vendors are aware, the Company has not supplied any services which were, are or will become defective or which do not comply in any respect with any express or implied warranties or representations made by any person or with all applicable regulations, standards and requirements and the Company does not give and has not given express warranties, representations, guarantees or indemnities as to the fitness for purpose, quality or otherwise of any of its products or services.

## 7.5 Retention of Title

The Company has not acquired or agreed to acquire any asset on terms that title to such asset does not pass to the Company until full payment is made.

## 7.6 Encumbrances Over Assets

There is no and has been no exercise or purported exercise of, or any claim for, any charge, lien, encumbrance or equity over any of the fixed assets of the Company which is still outstanding.

## 7.7 Stock

The levels of trade debtors and trade creditors are not materially different from those which the Company normally has at this stage of its trading year.

## 7.8 Insurance

Particulars of all insurances carried by the Company are contained in the Disclosure Documents and in respect of all such insurances:

- (a) all premiums have been duly paid to date;
- (b) all the policies are in full force and effect and are not voidable on account of any act, omission or non-disclosure on the part of the insured party;
- (c) so far as the Vendors are aware there are no circumstances which would or might give rise to any claim and no insurance claim is outstanding; and
- (d) all policies are held in the name of the Company.

# 8 Taxation and tax returns

## Taxation provisions

- 8.1 Full provision or reserve has been made in the Accounts for all Taxation liable to be assessed on the Company or for which it is or may become accountable in respect of the period ended on the Accounts Date and the Accounts make full provision for deferred Taxation and show the full potential liability of the Company for deferred Taxation.

## Payment of Taxation and tax returns

- 8.2 The Company has duly and punctually paid all Taxation which it ought to have paid to the appropriate Taxing Authority and the Company is not and has not been since incorporation liable to any penalty, interest, supplement, fine, default surcharge or other similar payment in connection with any Taxation.
- 8.3 The Company has within the required period duly and properly made, given or delivered all information, returns, notices, accounts and computations which ought to have been made for the purposes of Taxation and all such information, returns, notices, accounts and computations supplied to any Taxing Authority for any purpose are full, true and accurate and have been made on a consistent basis.
- 8.4 There are attached to the Disclosure Letter copies of the corporation tax computations and assessments of the Company for all accounting periods since incorporation.
- 8.5 There is no dispute or question with any Taxing Authority and the Company has not been the subject of any review, audit or investigation by any Taxing Authority and there is no fact or circumstance which might give rise to any such dispute, audit, review, investigation or question.

- 8.6 The Company has sufficient records and information to enable it to determine its liability to Taxation and any other Taxation consequences of a disposal of any of its assets, including without limitation, the amount of any chargeable gain, allowable loss or balancing charge.
- 8.7 The Company has complied fully with all reporting requirements, and proper records have been maintained, relating to all payments and benefits made or provided, or treated as made or provided, to its directors, employees or officers or former directors, employees or officers.
- 8.8 The Company has complied fully with all its obligations relating to national insurance contributions, both primary and secondary and has duly and punctually accounted for and/or paid to the relevant Taxing Authority all amounts of national insurance contributions which it ought to have so accounted for and/or paid.
- 8.9 There is no dispute or question with any Taxing Authority regarding the pay practices of the Company and/or its obligations relating to national insurance contributions and the "pay as you earn" system, and there is no fact or circumstance which might give rise to any such dispute or question.
- 8.10 No options have been granted or have been agreed to be granted to any director, employee, former director or former employee on the exercise of which the Company could be required or otherwise be liable to account for Taxation under the "pay as you earn" system, and to the extent that such options have been granted or agreed to be granted:

- (a) arrangements have either been made to secure that the relevant director, employee, former director or former employee will make good the due amount to the employer within the requisite time period; or
- (b) an agreement or joint election has been made between the Company and the relevant director, employee, former director or former employee allowing the employer's national insurance contributions to be recovered from, or the liability transferred to, the director, employee, former director or former employee

and full details of such arrangements, agreements or elections are set out in the Disclosure Letter.

- 8.11 The Company does not provide and has not provided emoluments to any of its directors, employees or officers in a form which is or could be treated as a "readily convertible asset" as defined in Section 203F(2) ICTA.
- 8.12 The Company is not liable to pay corporation tax in quarterly instalments.
- 8.13 The Disclosure Letter contains details of any dispensation or other special arrangement relating to Taxation (being an arrangement which is not based on a strict and detailed application of the relevant legislation or on generally published statements of practice or generally published extra statutory concessions) which have been granted to the Company by any Taxing Authority or have been made between the Company and any Taxing Authority.

#### Tax clearances

- 8.14 All clearances and consents that could or should have been applied for by or in respect of the Company from any Taxing Authority (but excluding such clearances and consents sought by the Vendors in connection with the sale of the Shares) have been obtained and were obtained after full and accurate disclosure of all material facts and considerations and have been disclosed to the Purchaser in the Disclosure Letter and no such clearance or consent is liable to be withdrawn, nullified or rendered void.

#### Payments under Deduction of Taxation

- 8.15 The Company has deducted or withheld all Taxation required or entitled to be deducted or withheld from any payments made by the Company and the Company has duly and punctually complied



with any obligation to account for any such Taxation deducted or withheld to the appropriate Taxing Authority.

8.15A All accrued bonus payments are deductible for tax purposes in the year accrued.

8.16 Any liability of the Company (actual or contingent) to gross up any payment which it is or may become required to make, as well as copies of all notifications from the Inland Revenue that any payment may be made gross or at a reduced rate of withholding which otherwise should have been made subject to deduction of an amount in respect of Taxation, are set out in the Disclosure Letter.

#### Shares and Financing

8.17 All interest payments which the Company is under an obligation to make are deductible and have not been and will not be treated as a distribution.

8.18 The Company has not at any time:

- (a) repaid, purchased or redeemed or agreed to repay, purchase or redeem any share capital or securities;
- (b) issued or agreed or resolved to issue shares or securities otherwise than for new consideration; or
- (c) capitalised or agreed to capitalise any profits or reserves into shares or securities and has not passed or agreed to pass any resolution to do so.

8.19 The Company has not issued nor is it the legal or beneficial owner of:

- (a) any shares to which Sections 249 to 251 (inclusive) ICTA could apply;
- (b) any securities (as defined in Section 254(1) ICTA) in relation to which payments might fall within Section 209(2)(d), (d)(a) and/or (e) ICTA;
- (c) any relevant discounted securities within the meaning of paragraph 3 of Schedule 13 to the Finance Act 1996; or
- (d) any debt which is not a normal commercial loan for the purposes of Section 117(1) TCGA or Schedule 18 ICTA.

8.20 The Company has not been concerned or agreed to be concerned in any transaction involving an exempt distribution within Sections 213 to 218 (inclusive) ICTA.

8.21 The Company does not hold an interest in a unit trust or an offshore fund to which the provisions of Schedule 10 to the Finance Act 1996 apply or could apply.

8.22A The Company is and has been taxed on an authorised accruals basis of accounting in relation to all loan relationships which are creditor relationships as defined in Section 103 of the Finance Act 1996 and in relation thereto:

- (a) the accruals on which the Company is taxable are computed only by reference to interest;
- (b) if any such debt were to be repaid at its face value, the Company would not suffer any charge to Taxation in excess of Taxation on interest accrued; and
- (c) there is no connection between the Company and the debtor as mentioned in Section 87 of the Finance Act 1996,

and there is no reason to believe that this will not continue to be the case in respect of accounting periods commencing on or after 1 October 2002.

- 8.22 The Company obtains and has obtained tax relief on an authorised accruals basis of accounting in relation to all loan relationships which are debtor relationships as mentioned in Section 103 of the Finance Act 1996 and in relation to each such relationship:
- (a) the deduction given in computing the taxable profits of the Company in consequence of that relationship is not less than the interest and/or discount accruing for the period concerned; and
  - (b) the Company would suffer no adverse Taxation consequences were such debts to be repaid at face value except that the tax deduction for interest accrued would cease,
- and there is no reason to believe that this will not continue to be the case in respect of accounting periods commencing on or after 1 October 2002.
- 8.23 The Company has not been, and will not prior to Completion be, released from any loan relationship or other debt in whole or in part in circumstances that give rise or could give rise to a liability to Taxation.
- 8.24 The Company has not been a party to a transaction to which the provisions of Sections 116(10) and 135 TCGA applied or could apply.
- 8.25 The Company has not at any time had any unrelieved surplus ACT, as defined in the Corporation Tax (Treatment of Unrelieved Surplus Advance Corporation Tax) Regulations 1999.
- 8.26 The Company is not and never has been a party to any interest rate contract or option, or currency contract or option which is or may become a qualifying contract as described in Chapter II of Part IV of the Finance Act 1994.
- 8.26A The Company's income has been generated solely from its trade as carried on at Completion and, for the purposes of clarification, the Company does not generate any investment income.
- Residence etc.
- 8.27 The Company:
- (a) is and always has been resident in the United Kingdom, and is not and never has been resident for any purpose in any other country;
  - (b) has no permanent establishment (as defined in any relevant double taxation convention), branch or agency or place of business outside the United Kingdom; and
  - (c) is not within the charge to Taxation of any nation, country, state or other political division outside the United Kingdom.
- 8.28 The Company is not and has no interest directly or indirectly in a controlled foreign company within Sections 747 to 756 (inclusive) ICTA.
- 8.29 The Company is not and has no material interest in an offshore fund within the meaning of Sections 757 to 764 (inclusive) ICTA.
- Deductions
- 8.30 Save as disclosed in the corporation tax computations, no amount of a revenue nature which has been paid or is payable by the Company or which it is under an obligation entered into before Completion to pay is wholly or partly disallowable as a deduction, charge on income or otherwise in computing the liability of the Company to Taxation.
- 8.31 The Company has not made or agreed to make any payment to or provided or agreed to provide any benefit to any director, employee, former director or former employee which is not allowable as a deduction in computing the Company's liability to Taxation on profits.

## Losses

- 8.32 The Company is not liable to have withdrawn any form of Relief and the Vendors and the Company are not aware of any circumstance such that the Company may be liable to such withdrawal.
- 8.33 There has been no change in the ownership of the Company nor any major change in the nature or conduct of any trade or business carried on by the Company nor has any other event or series of events occurred before Completion (including a significant increase in the amount of the Company's capital) which might cause the disallowance of the carry forward or back of losses or expenses of management or excess charges or the disallowance of the carry forward or back, set-off or surrender of advance corporation tax under the provisions of Section 768 or 768A ICTA (change in ownership of company: disallowance of relief for trading losses), Section 768B ICTA (change in ownership of investment company: deduction generally) or Sections 245 to 245B (inclusive) ICTA (ACT set off), or which might cause the restriction of the set-off of unrelieved surplus ACT pursuant to regulations 16, 17 or 18 of the Corporation Tax (Treatment of Unrelieved Surplus Advance Corporation Tax) Regulations 1999, or which might cause a trade to be disregarded by virtue of paragraph 8 of Schedule 7A TCGA.

## Capital Allowances

- 8.34 All capital expenditure incurred or to be incurred by the Company prior to the date hereof has qualified and continues to qualify for capital allowances and full disclosure of all allowances made to the Company has been made to the Purchaser.
- 8.35 The book value of each of the assets of the Company (other than plant or machinery) in or adopted for the purposes of the Accounts (and taken individually) does not exceed the written down value of such asset for the purposes of CAA.
- 8.36 The aggregate book value of each relevant category of plant or machinery of the Company in respect of which an entitlement to capital allowances has arisen under Part 2 of CAA does not exceed the value of the relevant pool of qualifying expenditure under the terms of that Act as at the Accounts Date.
- 8.37 Since the Accounts Date, the Company has not done or agreed to do any act as a result of which there may be made a balancing charge under Section 55(3) CAA or any disposal value may be brought into account under Section 61 CAA or Section 197 CAA.
- 8.38 There are no elections made by the Company under Section 198 CAA.
- 8.39 The Company is not a party to any leasing transaction where the rental payments are concentrated at the beginning or the end of the lease or to which the provisions of Schedule 12 to the Finance Act 1997 may otherwise apply.
- 8.40 The Company has received no grants, subsidies or other contributions in respect of assets in respect of which it has claimed or may claim capital allowances.
- 8.41 No capital expenditure incurred or to be incurred by the Company will be deemed by Section 5 CAA to be incurred on a date other than that upon which the obligation to pay the expenditure becomes unconditional.
- 8.42 The Company has not incurred or agreed to incur any expenditure to which Chapter 11 of Part 2 of CAA (overseas leasing) applies or could apply.
- 8.43 No act or event has occurred which has given rise or may give rise to a balancing charge under Section 55(3) CAA.

- 8.44 No allowances have been received by the Company in respect of a building or structure which is no longer in use as an industrial building.
- 8.45 The Company has not been a party to any transaction which might lead to a restriction of balancing allowances on sale of industrial buildings or structures under Section 325 CAA.
- 8.46 There is no R&D tax relief (as set out in paragraph 1 of Schedule 20 to the Finance Act 2000) claimed by the Company.

#### Allowable Cost of Assets for Chargeable Gains

- 8.47 The expenditure allowable as a deduction for the purposes of the computation of any chargeable gain attributable to any asset of the Company for the purposes of the Taxation on chargeable gains is not less than the value of that asset as shown in the Accounts.
- 8.48 No claims under Sections 152 – 158 (inclusive) or 175 TCGA (as extended by Section 179B TCGA) have been made or are proposed to be made which in any way affect any of the assets of the Company.
- 8.49 No loss which might accrue on the disposal by the Company of any share in or security of any company is liable to be reduced by virtue of any depreciatory transaction or deemed depreciatory transaction within Sections 176 and 177 TCGA.
- 8.50 The Company has no assets in respect of which there may be substituted for any purpose of Taxation a different consideration for the actual consideration given or received by it and does not own and has not agreed to acquire or dispose of any asset the consideration for the acquisition of which was or will be in excess of its market value or determined otherwise than on an arm's length basis.
- 8.51 The Company is not entitled to any allowable loss to which the provisions of Section 18(3) TCGA will apply.
- 8.52 No chargeable gain will accrue to the Company on the disposal of any debt owed by the Company for proceeds equal to the value of the debt as shown in the Accounts.
- 8.53 The Company is not and never has been the settlor, trustee or beneficiary of or otherwise interested in, any trust or settlement or foreign equivalent.
- 8.54 The Company has not been involved in any transaction where a claim has or could have been made under Sections 140A and 140C TCGA.
- 8.55 The Company has not subscribed for any shares in respect of which investment relief (as defined in paragraph 1 of Schedule 15 to the Finance Act 2000) has been claimed or is proposed to be claimed.
- 8.56 The Company has never been a qualifying company as defined in paragraph 19(2) Schedule 7AC TCGA.
- 8.57 The Company does not hold any shares or interest in shares (as defined in paragraph 29 Schedule 7AC TCGA) or assets related to shares (as defined in paragraph 30 Schedule 7AC TCGA) in other companies.
- 8.58 There are no circumstances currently in existence whereby if the Company disposed of any shares or interest in shares (as defined in paragraph 29 Schedule 7AC TCGA) or assets related to shares (as defined in paragraph 30 Schedule 7AC TCGA) in other companies held by the Company, the gain or any part of it would represent untaxed profits within the meaning of paragraph 5 Schedule 7AC TCGA.

#### Unremittable Profits

- 8.59 The Company has no income or chargeable gains on which Taxation has been deferred because the income or gains in question cannot be remitted to the United Kingdom.

#### Groups and Consortia

- 8.60 The Company is not, nor has it been in respect of any accounting period since incorporation, a member of a group of companies as defined in Section 170 TCGA or a member of a group of companies as defined in Section 413 ICTA or a company within the provisions of Section 240 ICTA.

#### Recovery of Tax from the Company

- 8.61 There is no liability to Taxation for which the Company is or may be liable to be assessed or asked to account or have collected from it where such Taxation is primarily chargeable against some other person or where such Taxation is the joint or joint and several liability of the Company and some other person or where the Taxation in question relates to any income, profits or gains earned, accrued or received by any other person.
- 8.62 The Company has and will have no liability to indemnify any person in respect of Taxation whether statutory or otherwise.

#### Close Company

- 8.63 The Company is a close company but is not and has never been a close investment holding company.
- 8.64 The Company has made no loan, advance, release or given consideration or effected a transaction falling within Sections 418 to 422 (inclusive) ICTA.

#### VAT

- 8.65 The Company is registered for the purposes of VATA and has not been and, so far as the Vendors are aware, will not be denied credit for any input tax (as defined in Section 24 VATA) incurred prior to Completion.
- 8.66 The Company has not at any time been treated as a member or a representative member of a group of companies for the purposes of VAT and no application has at any time been made for it to be so treated.
- 8.67 The Company has complied with all statutory provisions, regulations and notices relating to VAT and has duly and punctually accounted for and/or paid to the Commissioners of Customs and Excise all amounts of VAT which it ought to have so accounted for and/or paid.
- 8.68 The Company has not within the last six years been required by the Commissioners of Customs and Excise to give security or been in default in respect of any period for the purposes of Section 59 or 59A VATA.
- 8.69 Full details of any special or non-statutory arrangements in relation to VAT or any special method of accounting (including, without limitation, partial exemption) in relation to VAT agreed by the Company with the Commissioners of Customs and Excise are set out in the Disclosure Letter.
- 8.70 Full details of any capital items owned by the Company which are subject to Part XV of the Value Added Tax Regulations 1995 are set out in the Disclosure Letter including the date of acquisition, the date the first interval commenced, the number of remaining intervals in the period of adjustment and the input tax incurred and reclaimed on the capital items.
- 8.71 The Company does not own any land or buildings (including any interest in or right over any land or buildings) in respect of which it or a relevant associate (as defined in paragraph 3 Schedule 10

VATA) of it or any landlord of it has made an election to waive exemption pursuant to paragraphs 2 and 3 Schedule 10 VATA and the Property does not constitute a new building or civil engineering work within the meaning of Note 4 to Group 1 Schedule 9 VATA.

- 8.72 The Company has not made any supplies to which paragraphs 2(3AA) and 3A Schedule 10 VATA (disapplication of election to waive exemption) may apply.

#### Stamp Duty and Stamp Duty Reserve Tax

- 8.73 No liability under section 111, section 113 and Schedules 34 and 35 of the Finance Act 2002 has arisen nor will arise before or on Completion.
- 8.74 No claims for relief under section 76 FA 1986, section 42 FA 1930, section 151 FA 1995 have been made since 17 April 2002 or are proposed to be made by the Company.
- 8.75 No contract or agreement for the sale of an estate or interest in land in the United Kingdom has been entered into or will be entered into prior to Completion to which the provisions of section 115(2) of the Finance Act 2002 apply or could apply in the event that no document of transfer is executed pursuant to such contract within 3 months of Completion or no agreement reached with the Inland Revenue under section 115(2)(b) of the Finance Act 2002 and the Disclosure Letter contains details of any agreement between the Company and the Inland Revenue under section 115(2)(b) of the Finance Act 2002.
- 8.76 The Company is not entitled to any interest or estate in land pursuant to any contract in respect of which no conveyance or transfer has been executed and duly stamped.
- 8.77 All documents to which the Company is a party or which form part of the Company's title to any asset owned or possessed by it or which the Company may need to enforce or produce in evidence in the courts of the United Kingdom have been duly stamped and (where appropriate) adjudicated.
- 8.78 The Company has no liability, and will not incur any liability prior to Completion, to pay any stamp duty reserve tax.

#### Inheritance Tax

- 8.79 Any certificates of discharge from inheritance tax have been obtained by the Company after full disclosure.
- 8.80 The Company has made no transfers of value within Section 94 or Section 99 IHTA.
- 8.81 There are no circumstances whereby any power of sale, mortgage or charge under Section 212 IHTA could be exercised in relation to any shares in, securities of, or assets of, the Company.
- 8.82 None of the assets owned by or the shares in, the Company is or is liable to be made the subject of an Inland Revenue charge under Section 237 IHTA.

#### Anti-Avoidance

- 8.83 No transaction has been entered into or event occurred in consequence whereof the Company could be liable to Taxation or increased Taxation or to denial or reduction of a Relief pursuant to Sections 34 to 37 (inclusive) or 703 to 787 (inclusive) ICTA.
- 8.84 The Company has not entered into, allowed, permitted, consented to or been a party to any transaction within Section 765 ICTA without the prior written consent of the Treasury where necessary or Section 765A ICTA without reporting the transaction to the Inland Revenue within six months.
- 8.85 The Company has not received any foreign loan interest or any dividends paid by an overseas company on which double Taxation relief could be restricted under Sections 797, 798 or 804 ICTA.

- 8.86 The Company has not effected a scheme or made or been a party to arrangements whereby the value of an asset has been affected in such a way that Sections 29 to 34 TCGA applied or could be applied on the disposal of the asset in question.

Miscellaneous

- 8.87 The Disclosure Letter contains full details of any reorganisation, reconstruction or amalgamation involving the Company, within Sections 126 to 140 (inclusive) TCGA and Section 343 ICTA.

- 8.88 The Company does not and never has carried on business in partnership, or under any joint venture agreement or arrangement and is not and never has been any person's agent or representative for Taxation purposes.

Taxation outside the United Kingdom

- 8.89 Paragraphs 8.1 to 8.88 of this Schedule 6 shall apply mutatis mutandis in relation to Taxation outside the United Kingdom and accordingly any reference in those paragraphs to any form of Taxation or Relief or any statutory provision relating to Taxation in the United Kingdom shall be deemed to include a reference to the equivalent or substantially equivalent form of Taxation or Relief or statutory provision relating to Taxation in any other relevant taxing jurisdiction.

**9 Employees and agents**

9.1 Details of the Employees

The Employees are all the employees of the Company as at Completion and the names, current salaries and other remuneration and emoluments, details of all benefits, date of birth, the date of commencement of the respective periods deemed to be their period of continuous employment with the Company and job descriptions of the Employees and all material terms relating to their employment are as set out in the Disclosure Documents.

9.2 Incentive Schemes

The Disclosure Documents also include full details of all employee share schemes, employee share option schemes, profit related pay schemes or other employee benefit schemes of any kind of the Company now in force or capable of being in force and there are no other such schemes.

9.3 Commitments

- 9.3.1 No assurances or undertakings (whether legally binding or not) have been given to any of the Employees as to the continuance or introduction or increase or improvement of any retirement, death, sickness or disability scheme or any benefit or any discretionary arrangements.

- 9.3.2 There is no outstanding commitment (whether legally binding or not) to increase the remuneration or change the terms and conditions of any Employee.

9.4 Notice Periods

All contracts of service or consultancy or for services with directors or employees or consultants or independent contractors providing the services of individual personnel of the Company can be terminated by three months' notice or less without giving rise to any claim for damages or compensation (other than a statutory redundancy payment or statutory compensation for unfair dismissal, if applicable).

9.5 Liabilities and Payments

Except where any provision or allowance is made in the Accounts:

- (a) no liability (actual or contingent) has been incurred in the 12 months prior to Completion by the Company for breach of any contract of service or consultancy, for redundancy

payments (including protective awards), for compensation for wrongful dismissal or unfair dismissal or loss of office or for failure to comply with any order for the reinstatement or re-engagement of any officer or employee; and

- (b) no payment has been made or promised by the Company in connection with the termination, suspension or variation of any contract of service or consultancy or for services of any present or former officer or employee and no bonus or special remuneration has been paid or agreed to be paid to any such officer or employee.

#### 9.6 Compliance

No claim has been made and so far as the Vendors are aware there are no circumstances under which it is likely that a claim will be made against the Company in relation to all applicants for employment, each of the Employees and its former employees as a result of the Company not having complied in all material respects with all material obligations imposed on it by all contracts, statutes, orders, regulations, collective agreements, awards and codes of conduct and practice relevant to conditions of service and to the relations between it and the Employees and former employees and the Company has in all material respects maintained adequate and suitable records regarding the service of the Employees and former employees.

#### 9.7 Recognition and Disputes

The Company has not entered into any recognition agreement with any trades union nor has it done any act which could be construed as an act of recognition and the Company does not have a collective bargaining agreement with any trade union and is not involved in and has not been involved in the last 3 years in any industrial or trade dispute and there are no present circumstances which are likely to give rise to any industrial or trade dispute or any dispute or negotiation regarding a claim of material importance with any trade union or association of trade unions or organisation or body of employees.

#### 9.8 Redundancies

In the 12 months prior to Completion, the Company has not given or failed to give notice of any redundancies to the Secretary of State for Employment or started consultations with any trade union or unions under the provisions of Part 2 of the Trade Union and Labour Relations (Consolidations) Act 1992 and the Company has not failed to comply with any such obligations under Part 2.

#### 9.9 Change of Control

There is no term of employment for any Employee which provides that a change of control of the Company shall entitle the Employee to treat the change of control as amounting to a breach of the contract or entitling him to any payment or benefit whatsoever or entitling him to treat himself as redundant or otherwise dismissed or released from any obligation.

#### 9.10 Redundancy payments

The Company has no obligation to make any payment in respect of redundancy in excess of the statutory redundancy payment and the Company has not operated any discretionary practice of making any such excess payments.

#### 9.11 Employment Litigation

No claim in relation to the Employees or person previously employed in the Company has been made or threatened within the last 12 months against the Company.



9.12 Notice of Termination

Within the last 6 months, no Employee has given, or has been given notice of termination of his employment or has indicated an intention to terminate his employment.

9.13 Records

The Company has maintained up-to-date and accurate records regarding the employment of each of its employees (including, without limitation, details of terms of employment, payment of statutory sick pay and statutory maternity pay, income tax and social security contributions, disciplinary and health and safety matters, adequate records for the purposes of the Working Time Regulations 1998) and termination of employment.

9.14 Leave entitlement

No Employee has any entitlement in respect of annual leave, sick absence, maternity leave, parental leave, adoption leave and paternity leave in excess of statutory provisions.

9.15 Performance payments

There is no arrangement in operation (including, but not limited to, on a customary or discretionary basis) by the Company under which any Employee or other person is entitled to remuneration of any sort (including, without limitation, bonus, commission or profit sharing) by reference to the turnover, profits or performance of the whole or any part of the Company.

9.16 Sickness

Each Vendor for himself only warrants that so far as he is aware he does not suffer from any mental or physical illness, incapacity or condition which would affect his ability to perform the role to which he is appointed or affect the Purchaser's ability to take out keyman insurance on him, and none of the Vendors has been absent through illness lasting in aggregate more than two weeks in the 24 months immediately prior to Completion.

10 Pensions

10.1 Except for the Disclosed Schemes and the Personal Pension Schemes, there is not in operation as at the date of this Agreement, and there has not been in operation at any time prior to the date of this Agreement, and no proposal has been announced to enter into or establish, any agreement, arrangement, custom or practice for the payment by the Company of, or payment by the Company of a contribution towards, a pension, allowance, lump sum or other similar benefit on retirement, death, termination of employment (whether voluntary or not) or during periods of sickness or disablement (whether during service or after retirement) for the benefit of a Pensionable Employee or a Pensionable Employee's dependants and the Company has duly complied with all applicable legal and administrative requirements relating to stakeholder pension schemes (as defined in section 1(1) of the Welfare Reform and Pensions Act 1999) and has disclosed all material details of the stakeholder pension schemes designated by the Company in relation to the Pensionable Employees.

10.2 No amount due in respect of the Disclosed Schemes or the Personal Pension Schemes from the Company is unpaid and the Disclosure Letter contains a statement of the basis on which the Company has undertaken to contribute to the Personal Pension Schemes and the Disclosed Schemes.

10.3 Except for insured lump sum death-in-service benefits payable under the Disclosed Schemes, no assurance, promise or guarantee (oral or written) has been made or given to any individual of a particular level or amount of benefits to be provided for or in respect of him under the Disclosed Schemes or the Personal Pension Schemes on retirement, death or leaving employment.

- 10.4 The Disclosure Documents contain the following details relating to the Disclosed Schemes:
- (a) a copy of each agreement, deed and all rules governing or relating to the Disclosed Schemes;
  - (b) a copy of all announcements and explanatory documents of current effect (including member's booklets) relating to the Disclosed Schemes which have been issued to or in respect of Pensionable Employees;
  - (c) a list of deferred, active and pensioner members of the Disclosed Schemes;
  - (d) a copy of the trustees report and accounts for the last scheme year in respect of the SSAS;
  - (e) a copy of the report of the most recent actuarial valuation in relation to the SSAS;
  - (f) details of the annual insurance premium payable in respect of each of the Life Assurance Scheme and the Unapproved Life Assurance Scheme for the last scheme year and a copy of the insurance policy; and
  - (g) full material details of any investments held by the SSAS which constitute employer related investments for the purposes of the Pensions Act 1995 and its underlying regulations.
- 10.5 Each of the Disclosed Schemes and the Personal Pension Schemes have been administered in accordance with all applicable legal and administrative requirements.
- 10.6 Each benefit (except a refund of contributions) payable under the Disclosed Schemes on the death of a member of the Disclosed Schemes or during periods of sickness or disability is at the date of this Agreement fully insured under a policy effected with an insurance company and all insurance premiums payable have been paid.
- 10.7 No plan, proposal or intention to amend, discontinue or exercise a discretion in relation to the Disclosed Schemes has been communicated to any member of the Disclosed Schemes.
- 10.8 No Pensionable Employee has been discriminated against by virtue of his or her part-time status in connection with access to or the provisions of benefits under the Life Assurance Scheme.
- 11 Litigation**
- 11.1 The Company is not and no person for whose acts and defaults it may be vicariously liable is at present engaged whether as claimant, defendant or otherwise in any legal action, proceeding or arbitration which is either in progress, or is threatened or is pending (other than as claimant in the collection of debts arising in the ordinary course of the business carried on by it none of which exceeds £1,000 and which do not exceed £5,000 in aggregate) or is being prosecuted for any criminal offence and no written notice of any claim in damages or for an injunction has been received by the Company and no governmental or official investigation or inquiry concerning the Company is in progress or pending.
- 11.2 There are no circumstances known to any of the Vendors likely to lead to any such claim or legal action, proceeding or arbitration, prosecution, investigation or enquiry.
- 11.3 No distress, execution or other process has been levied in respect of the Company nor is there any judgement or court order outstanding against the Company.
- 11.4 No act, transaction or omission has occurred as a result of which the Company is or may be held liable to refund in whole or in part any investment grant (or other grant or loan received from any governmental department or agency or any local or other authority by virtue of any statute).

## **12 Capital commitments, unusual contracts, guarantees etc.**

### **12.1 Capital Commitments**

The Company has no capital commitments which individually exceed £5,000 or in aggregate exceed £50,000.

### **12.2 Contracts**

The Company is not a party to any contract, arrangement or commitment (whether in respect of capital expenditure or otherwise) which:

- (a) was entered into otherwise than on terms determined on an arms' length basis; or
- (b) is of an unusual or abnormal nature having regard to the usual practice of the Company prior to the date hereof; or
- (c) is outside the ordinary course of business; or
- (d) is of a long term nature (that is a contract which is not terminable by the Company by three months' notice or less without payment of compensation or damages); or
- (e) is of an onerous nature (that is a contract or other arrangement under which the Company is required to supply goods or services at prices significantly below those ruling at the date hereof or to supply goods or services at fixed prices where such supply or delivery is liable to take place more than three months from order or to pay for goods or services at prices significantly above those ruling at the date hereof); or
- (f) is dependent on the guarantee or security of any person; or
- (g) is likely to result in a loss to the Company upon completion of performance or fulfilment of the Company's obligations thereunder; or
- (h) requires the Company to pay any royalty, commission or like payment; or
- (i) relates to the supply of goods and/or services by or to the Company (whether or not legally enforceable) under or in relation to which retrospective or future discounts, price reductions or other incentives have been or are proposed to be given by or to the Company or by or to any other person.

### **12.3 Powers of Attorney and Agents**

The Company has not delegated any powers under a power of attorney which remains in effect and has not appointed any agent under an authority which has not been revoked (other than any ostensible or implied authorities to directors or employees and consultants to enter into routine contracts in the normal course of their duties).

### **12.4 Default**

The Company has not, by reason of its default, become bound, and no person has become entitled (or with the giving of notice and/or the issue of a certificate will become entitled) to require it to repay prior to its stipulated due date any loan capital or other debenture, redeemable preference share capital or borrowed money and no notice has been received since the Accounts Date of such liability having arisen for any other reason.

### **12.5 Guarantees and Indemnities**

The Company has not entered into and is not bound by any guarantee or indemnity under which any liability or contingent liability is outstanding.

12.6 Leasehold Property

The Company has not at any time acquired, assigned or otherwise disposed of any leasehold property in such a way that it retains any residual liability.

12.7 Joint Ventures

The Company is not and has never been party to any joint venture, consortium, partnership or profit sharing arrangement or agreement.

**13 Borrowings and lendings**

13.1 Full details of all bank accounts maintained by the Company and the limits on the Company's bank overdraft facilities are accurately set out in the Disclosure Documents and the total amount borrowed by the Company from its bankers does not exceed its overdraft facilities.

13.2 The total amount borrowed by the Company does not exceed any limitation on its borrowing powers contained in its Articles of Association, or in any debenture or other deed or document binding on it.

13.3 The Company does not have outstanding, nor has agreed to create or issue, any loan capital, nor has it factored any of its debts, or engaged in financing of a type which would not require to be shown or reflected in the Accounts, or borrowed any money which it has not repaid, except for borrowings not exceeding the amounts shown in the Accounts.

13.4 Other than in the ordinary course of business, the Company has not lent any money which has not been repaid, and does not own the benefit of any debts (whether or not due for payment), other than debts which have arisen in the ordinary course of business and the Company has not made any loan or quasi-loan contrary to any legislation.

13.5 Continuation of Facilities

In relation to all debentures, acceptance credits, overdrafts, loans or other financial facilities outstanding or available to the Company or any of them (referred to in this Warranty as "Facilities"):

- (a) there are included in the Disclosure Documents full and complete copies of all documents relating to the Facilities;
- (b) the Company is not in contravention of, or non-compliance with, any provision of any document relating to any of the Facilities;
- (c) no steps for the early repayment of any indebtedness have been taken or threatened in writing;
- (d) so far as the Vendors are aware no circumstances exist or have arisen as a result of which the continuation of any of the Facilities might cease or be prejudiced, or which may give rise to any alteration in the terms and conditions of any of the Facilities;
- (e) none of the Facilities is dependent on the guarantee or indemnity of, or any security provided by, any party other than the Company;
- (f) none of the Facilities may according to its terms be terminated or mature prior to their stated maturity as a result of the acquisition of the Shares (or any of the Shares) by the Purchaser; and
- (g) the Facilities are adequate to allow the Company to continue trading after Completion on the same basis as prior to Completion.

## **14 The Property**

### **14.1 General**

- 14.1.1 The Property comprises all the land and premises that the Company owns, leases, occupies or otherwise uses or in which the Company has any estate, interest or liability (including, but not limited to, any interest in the nature of an option, pre-emption or licence agreement).
- 14.1.2 The Company has in its possession all title deeds, leases and agreements to which it is a party and these are properly executed and stamped and all Stamp Duty Land Tax due on any land transactions since 1<sup>st</sup> December 2003 has been fully and properly paid and there are no outstanding requisitions or investigations pending with the Inland Revenue relating to any of them.
- 14.1.3 The Property enjoys all rights (including all required heritable and irredeemable servitude rights) necessary for their existing and continued use and enjoyment.
- 14.1.4 [not used] – there are no particulars in SPA.
- 14.1.5 The Company is in occupation of the Property for the purposes of the Business. The Company does not use or occupy any property in connection with the Business other than the Property.
- 14.1.6 The rateable value of the Property is as shown on the valuation roll and is not presently subject to appeal or reassessment.
- 14.1.7 The central heating systems, ventilation equipment, all other plant, machinery and equipment and the electrical, gas, water supply and drainage systems serving the Property are in good working order and conform to current regulations.
- 14.1.8 The buildings, structures and other erections and all fixtures, fittings, plant, machinery and equipment included in each of the Properties, all additions and extensions thereto and all alterations and modifications thereof and the layout and current use of each of the Properties are or have been effected in conformity with all applicable statutes (including without prejudice to the foregoing generality the Building (Scotland) Acts, the Housing (Scotland) Acts, the Town and Country Planning (Scotland) Acts, the Offices, Shops and Railway Premises Act 1963, the Health and Safety at Work Act 1974, the Fire Precautions Act 1971 and the Factories Acts) and all current regulations and local authority bye-laws and all necessary consents have been obtained without any conditions being attached to such consents. The planning applications Nos 2407/98, 2408/98, 00/00208/DC, 00/03566/DC and 00/03567/DC revealed in the SPH certificate dated 12 October 2004 do not relate to the Property.
- 14.1.9 The existing uses of the Properties are the permitted uses under the Town and Country Planning (Scotland) Acts and are not temporary, personal or subject to planning conditions of an onerous or unusual nature.
- 14.1.10 The Property is not affected by or so far as the Vendors are aware likely to become adversely affected by any notice, order or proposal made or issued by or on behalf of any government or statutory authority.
- 14.1.11 Without prejudice to the generality of sub-paragraph 14.1.10 above there are no outstanding notices, orders or proposals calling for repairs to the Property or to the larger buildings of which they form part or to the services of any of the Property. The Company is not aware of any alteration, refurbishment or renewal of the whole or any part of either the Property or the buildings of which the Property forms part which may be incurred or charged in whole or in part to the Company.
- 14.1.12 There are no existing notices, orders, proposals, redevelopment plans, road widening or road improvement proposals, applications or any other matters under the Town and Country Planning (Scotland) Acts, the Housing (Scotland) Acts or the Building (Scotland) Acts nor of any other

notices from any authority which might have an adverse effect on the Property or the current use thereof, the Property is not affected by a Section 75 Agreement and the Property is not included in the list of buildings of special architectural or historic interest or in a conservation or housing action area.

- 14.1.13 Compliance is being made and has at all times been made with all applicable statutory and by-law requirements with respect to the Property and its use.
- 14.1.14 Any Fire Certificate necessary for the Property has been obtained and complied with in all respects.
- 14.1.15 The Property has gas and electricity supplies and a public water supply and the footpaths, kerbs, water channels, roads and sewers ex adverso and serving each of the Property have been taken over and are maintained by the local authority.
- 14.1.16 The Property is in good and substantial repair and condition and in particular (1) no flooding, subsidence or settlement or structural or other material defect of any kind affects or has affected the Property and (ii) high alumina cement, calcium chloride, wood wool slabs, blue asbestos or other deleterious materials were not used in the construction of the building structure or any other erection included in any of the Property.
- 14.1.17 The Company is not for any reason anticipating the expenditure of any substantial sum of money in respect of the Property.
- 14.1.18 The Company has received no adverse surveyors', engineers' or other professional report in respect of any of the Property.
- 14.1.19 The Company has obtained all licences, permissions and consents which may be required or ought to be obtained to enable it to carry on its business from the Property.
- 14.1.20 The replies given by the Vendors' Solicitors to enquiries raised by the Purchasers' Solicitors in respect of the Property are true and accurate in all respects.
- 14.1.21 No notice, action, or proceedings affecting the Property has been served or commenced and there are no disputes concerning the Property with any person and there are no circumstances now existing which are likely to result in any such notice, action or proceedings being served or commenced or any such dispute arising.
- 14.1.22 There is no actual or contingent liability on the part of the Company arising directly or indirectly out of any lease, agreement for lease, conveyance or licence or other deed, including without prejudice to the foregoing generality any actual or contingent liabilities arising directly or indirectly out of:-
  - (a) any estate or interest in land previously held by the Company as an original lessee or underlessee; or
  - (b) any covenant made by the Company in favour of any lessee or any guarantee given by the Company in relation to a lease or underlease.

## **14.2 Heritable Properties - Scotland**

- 14.2.1 The Company has a good and marketable title (containing no exclusion of indemnity under section 12(2) of the Land Registration (Scotland) Act 1979, where a Land Certificate has been issued) in its own name.
- 14.2.2 Save as disclosed in the Disclosure Documents, the Property is not subject to any fixed or floating charge, agreement for sale, lease or agreement for lease, licence, real burden, overriding interest (as defined in section 28 of the Land Registration (Scotland) Act 1979), reservation of minerals,

pecuniary burden, agreement to grant any Standard Security, inhibition, adjudication or any other encumbrance.

- 14.2.3 The Company is in actual occupation and has exclusive possession of the Property and, save as disclosed in the Disclosure Documents Letter, no part of the Property is subject to any lease, licence or any other agreement giving any right of occupancy to any third party.
- 14.2.4 There are no onerous, restrictive or unusual burdens or conditions or pre-emption rights contained in the title deeds of the Property and, in particular, none that conflict with or limit the present user of the Property or any part or parts thereof.
- 14.2.5 Liability for repair or reinstatement of any common or mutual property (including the walls, roofs, rhones, drainpipes and other items of mutual or common property) is (where appropriate) apportioned among all interested proprietors on an equitable basis in the title deeds of each of the Property.
- 14.2.6 All burdens and conditions contained in the title deeds of each of the Property have been fully observed and implemented.
- 14.2.7 The Property is not subject to and are not claimed to be subject to any servitudes, public rights of way or other like rights.

#### **14.3 Leasehold Properties - Scotland**

- 14.3.1 The Company does not hold any Properties under Lease.

#### **15 Environmental**

- 15.1 The Company complies with and has complied with and has no actual or contingent liability under all and every requirement of Environmental Law relating to use and occupation of the Property.
- 15.2 The Company does not require any Environmental Consents for the Company's activities carried out from the Property.
- 15.3 The Company has not received any notice of any breach or alleged breach of any Environmental Law.
- 15.4 There is and has been no notice or other indication of any actual, pending or threatened claim, complaint, assessment or litigation against the Company with respect to the Company or the business of the Company with respect to any alleged non-compliance with Environmental Laws.
- 15.5 The Company has no environmental audit reports, assessments, studies or tests, insurance appraisals, Environmental Consents, applications for Environmental Consents, health and safety reports and associated documentation and correspondence relating to the assets of the Company.

#### **16 Insolvency**

- 16.1 No administrator, administrative receiver, receiver (including Law of Property Act receiver), manager of assets, liquidator (including provisional liquidator) or any other similar officer has ever been appointed in respect of the whole or any part of the assets or undertaking of the Company and no order has been made, petition presented or resolution passed for the purpose of the making of any order in relation to administration, administrative receivership, receivership, liquidation, management of assets or any other similar situation of the Company.

- 16.2 The Company is neither insolvent nor unable to pay its debts as they fall due (as such expression is defined in either sub-section (1)(a) to (d) (inclusive) or sub-section (2) of Section 123 of the Insolvency Act 1986).
- 16.3 No voluntary arrangement (as referred to in the Insolvency Act 1986) or scheme of arrangement as regards its creditors has been proposed by the Directors or is in operation in relation to the Company.
- 16.4 The Company has not entered into any transaction nor been given a preference to which Sections 238, 239 or 423 of the Insolvency Act 1986 apply or which may otherwise be liable to be set aside or avoided for any reason.

## **17 Intellectual Property and Related Warranties**

### **17.1 Ownership**

#### **17.1.1 The Company is either:**

- (a) the sole legal and beneficial owner of the Business IP; or
- (b) in relation to the Licensed IP, a lawful licensee.

#### **17.1.2 All Business IP owned by the Company is valid, unencumbered, enforceable and subsisting and nothing has been done or omitted to be done which may cause any of it to cease to be so.**

#### **17.1.3 Material details of all:**

- (a) trade marks, service marks, domain names and business or trading names, whether registered or unregistered, used by the Company;
- (b) all registrations and applications for registration of any Intellectual Property owned by the Company or proceeding in the name of the Company;
- (c) unregistered Business IP which is material to the Business;
- (d) Licensed IP; and
- (e) Software in which, or in relation to which, the Company holds, owns or otherwise uses any Intellectual Property;

are contained in the Disclosure Documents.

### **17.2 Maintenance**

#### **17.2.1 The Company has:**

- (a) made all applications for registration for:
  - (i) all Business IP owned by the Company;
  - (ii) all of the Company's rights in the Licensed IP;that are able to be registered in any jurisdiction in which the Company conducts its business; and
- (b) taken all other steps necessary or desirable for the fullest protection of the Business IP owned by the Company and all of the Company's rights in the Licensed IP, including without limitation making all relevant searches in all jurisdictions where the Company conducts its business before registering or using the Business IP and repeating such searches on a regular basis.



- 17.2.2 All renewal and extension fees in respect of any registered Business IP have been duly paid, and all other steps required for the maintenance and protection of any registered Business IP have been taken, in any jurisdiction in which they are registered.
- 17.2.3 All documents and materials:
- (a) material to the right, title and interest of the Company to the Business IP, including without limitation any licenses of the Licensed IP; and
  - (b) necessary for the prosecution or maintenance (as applicable) of all registrations and applications for registrations in relation to the Business IP owned by the Company;
- form part of the records or materials in the possession or ownership of the Company.
- 17.3 Dealings and Adequacy of Rights
- 17.3.1 None of the Business IP is subject to any charge or license other than as set out in the Company Licences and Third Party Licences.
- 17.3.2 The Company has not:
- (a) authorised or otherwise expressly or impliedly permitted any use whatsoever of Business IP owned by the Company; or
  - (b) granted to any third party any right or interest in respect of such Business IP;
- other than under a Third Party Licence.
- 17.3.3 All Company Licences and Third Party Licences are in writing and are enforceable, valid and subsisting.
- 17.3.4 A list of all Third Party Licences and Company Licences and complete copies of all such Third Party Licences and Company Licences (including any amendments and variations to those agreements) are contained in the Disclosure Documents.
- 17.3.5 All Business IP, including without limitation all Licensed IP, will be available for use by the Company on substantially identical terms and conditions immediately following Completion, without further action or payment by the Purchaser.
- 17.3.6 The Business IP comprises all the Intellectual Property reasonably necessary to carry on the business as conducted by the Company as at the date of this agreement.
- 17.4 Infringements
- 17.4.1 No activities, documents, materials (whether in tangible or intangible form), Software, web sites, products, services or processes of the Company (or any licensee under any Third Party Licences in relation to the Business IP) infringe or have infringed, any Intellectual Property of a third party or involve or have involved the unlicensed use of a third party's confidential information or give or have given rise to liability to pay compensation.
- 17.4.2 So far as the Vendors are aware, no third party has made or is making any unauthorised use of, or has infringed or is infringing, any Business IP or Commercial Information and no third party or competent authority has made any claim, challenge or opposition to or against the Company in relation to the Business IP or Commercial Information.
- 17.4.3 No third party has registered or applied to register in any country any Intellectual Property or Commercial Information made, or claimed to be owned, by the Company.
- 17.4.4 No Company Licence or Third Party Licence, or other agreement in relation to the Business IP, has been the subject of any material breach by the Company and the Company has not formally

waived any material breach of any other party, and no notice or knowledge of breach of or termination of any Third Party Licences has been received by the Company.

- 17.4.5 The Company is not subject to any order or injunction or other restrictive measure or undertaking imposed by any court or other body of competent jurisdiction in relation to the Business IP (including, without limitation, any prohibition or restriction on use).

17.5 Commercial Information

- 17.5.1 All Commercial Information has at all times been kept confidential by the Company and the Company has not disclosed (except in the ordinary course of business and, in the case of a material disclosure, subject to a binding confidentiality obligation) any of its Commercial Information other than to their employees and professional advisers.

- 17.5.2 The Company operates and complies with adequate procedures to maintain the confidentiality of its Commercial Information.

- 17.5.3 The Company is entitled to use all Commercial Information in its possession and there are no restrictions on the use of that Commercial Information.

17.6 Claims

- 17.6.1 No claims, disputes or proceedings in respect of Business IP have been settled by the Company in the two years immediately preceding Completion, except those details of which are set out in the Disclosure Letter.

- 17.6.2 There are and have been no claims, formal disputes or proceedings which have a material adverse effect on:

- (a) the Business IP owned by the Company;
- (b) the Company's use of the Licensed IP; or
- (c) the right of the Company (and any licensee of the Company) to use anywhere in the world any of the Business IP;

except those details of which are set out in the Disclosure Letter.

- 17.6.3 No party (whether an individual, partnership, or company) retained, commissioned, employed or otherwise engaged by the Company from time to time and who, in the course of such engagement created, discovered or developed work in which Intellectual Property subsists has made any claim to the Company relating to:

- (a) any right, title or interest in such Intellectual Property; or
- (b) any compensation or remuneration in relation to such Intellectual Property whether under section 40 of the Patents Act 1977 or equivalent legislation in the world or otherwise;

in the two years immediately preceding Completion, except those details of which are set out in the Disclosure Letter.

17.7 Data Protection

In respect of any Personal Data processed by the Company, the Company:

- (a) has made all necessary registrations and notifications of its particulars in accordance with the Data Protection Legislation;
- (b) all details supplied in relation to each such application for registration or notification are accurate and complete;

- (c) complies and will continue to comply with the Data Protection Legislation (including but not limited to the Data Protection Principles) and any guidance notes or guidelines issued in connection therewith;
- (d) will co-operate fully in complying with any subject access requests made pursuant to the Data Protection Legislation; and
- (e) no notice of any kind has been served on the Company under any provision under any part of the Data Protection Legislation or any analogous legislation in any part of the world.

## 17.8 The Internet

- 17.8.1 No domain names have been registered by any third party which are similar to any trade marks, service marks, domain names or business or trading names of the Company.
- 17.8.2 The contents of any Company Web Site and any transactions conducted over the internet complies with all laws and regulations and codes of practice in any applicable jurisdiction.

## 18 Competition, anti-trust and cartels

The Company has not done anything which, and is not a member or party to any agreement or arrangement which, contravenes or requires registration or notification under any of the provisions of the Fair Trading Act 1973, the Restrictive Trade Practices Acts, the Resale Prices Act 1976, the Treaty of Rome, the Competition Act 1980 or the Competition Act 1998 or any other anti-trust, anti-monopoly or anti-cartel legislation or regulation in any country of the world in which or with which it does business.

## 19 Financial Services

- 19.1 The Company does not carry on nor has it carried on at any time any designated investment business (as defined under FISMA) in the United Kingdom in relation to which it is required to apply to the FSA for a Part IV permission and be an authorised person nor has the Company contravened, or received notice from the Financial Services Authority or any other regulator that it may have contravened, any provision of FISMA or any orders, rules or regulations made thereunder.
- 19.2 To the extent the Company carried on business on or prior to 30 November 2001, it has not at any relevant time carried on investment business in the United Kingdom within the meaning of the Financial Services Act 1986 in relation to which it would have been required to be an authorised person (as defined in the said Act) nor did the Company contravene, or receive notice from the Financial Services Authority or any other regulator that it may have contravened, any provision of the said Act or any orders, rules or regulations made thereunder.

## **SCHEDULE 7**

### **Limitations on Liability under the Warranties**

- 1 Notwithstanding the provisions of clause 7, the Vendors shall not be liable in respect of a breach of the Warranties if and to the extent that the loss occasioned thereby has been recovered under the Tax Deed.
- 2 The Vendors shall not be liable for any claim under the Warranties:
  - (a) to the extent that the subject of the claim is specifically provided for or reserved in the Accounts and/or the Completion Accounts; or
  - (b) to the extent that the claim arises or is increased:
    - (i) wholly or partly from an act or omission of or occurring at the written request of or with the prior written consent of the Purchaser or its Affiliates or (after Completion and other than in the ordinary course of business) the Company or any of its directors, other officers, employees or agents;
    - (ii) wholly or partly from an act or omission compelled by law;
    - (iii) as a result of any increase in rates of Taxation since the date of this Agreement; or
    - (iv) wholly or partly as a result of the passing or coming into force of or any change in any enactment, law, regulation, directive, requirement or any generally published practice of any government, government department or agency or regulatory body (including but not limited to extra-statutory concessions of the Inland Revenue) after the date of this Agreement whether or not having retrospective effect; or
  - (c) to the extent that the loss giving rise to the claim is recovered under any policy of insurance of the Company or would have been so recovered but for any change in the terms of insurance since Completion.
- 3 No proceedings shall be commenced in respect of any claim for breach of the Warranties or the Tax Deed unless:
  - (a) written notice giving reasonable details of a claim:
    - (i) shall, in the case of any claim other than a claim relating to Taxation, have been delivered to the Vendors by the Purchaser not later than the second anniversary of the date on which Completion takes place; and
    - (ii) insofar as such breach relates to Taxation, shall have been delivered to the Vendors by the Purchaser not later than the sixth anniversary of the date on which Completion takes place;
  - (b) in the case of any claim other than a claim relating to Taxation, the proceedings are commenced before the second anniversary of the date on which Completion takes place, and within the period of twelve months from the date on which notice of the claim is first given and in the case of any claim relating to Taxation, the proceedings are commenced before the sixth anniversary of the date on which Completion takes place, and within the period of twelve months from the date on which notice of the claim is first given, or in either case such extended period as the parties may agree in writing;
  - (c) the liability of the Vendors in respect of that claim exceeds £750; and

- (d) the amount of the claim when aggregated with all other claims (not being a claim for which liability is excluded under paragraph 3(c)) exceeds £10,000 in which event the whole of such claims (and not merely the excess) may be claimed under legal proceedings.
- 4 The total aggregate amount of the liability of the Vendors for damages for breach of the Warranties and under the Tax Deed shall be limited to the total consideration payable under clause 3.1, and the liability of each Vendor for damages for breach of the Warranties and under the Tax Deed shall be limited to his Agreed Proportion of the Consideration received by him at the time such claim becomes a Determined Claim.
- 5 If the Purchaser becomes aware of any claim or any matter which may involve any of the Vendors in liability pursuant to the terms of this Agreement (in this Schedule, "a Claim"), the Purchaser will procure that:
- (a) notice thereof is given to the Vendors' Representative;
- (b) particulars, or such particulars as are known to the Purchaser at the time of the Purchaser becoming so aware, are given in writing to the Vendors within a reasonable period; and
- (c) all reasonable steps or actions are taken as are necessary in order to mitigate any claim under the Warranties.
- 6 In the case of a Claim resulting from a claim made or which may be made by a third party (in this Schedule a "Third Party Claim"), the Vendors' Representative shall within 14 days of having received notice thereof pursuant to paragraph 5 above inform the Purchaser in writing whether or not the Vendors desire to conduct the defence of such Third Party Claim.
- 7 If the Vendors' Representative does not give notice in accordance with paragraph 6 above, the Vendors shall be deemed to have given notice in accordance with that paragraph that they do not wish to conduct the defence of such Third Party Claim.
- 8 If the Vendors' Representative has given notice that the Vendors desire to conduct the defence of a Third Party Claim then:
- (a) the Purchaser and the Company shall, subject as provided in paragraph 10, take such lawful action as the Vendors' Representative may reasonably request to avoid, dispute, resist, appeal, compromise or defend the Third Party Claim subject only to the relevant company being specifically indemnified and secured to their satisfaction against any costs, loss or expense which they or any of them may thereby incur (including any additional taxation); and
- (b) the Vendors' Representative shall from time to time and forthwith upon the request of the Purchaser keep the Purchaser fully informed of their conduct of and any negotiations relating to the defence of such Third Party Claim.
- 9 If the Vendors' Representative has informed the Purchaser that the Vendors do not wish to defend any Third Party Claim (or is deemed to have so informed the Purchaser), the Purchaser or the Company may take such action as the Purchaser or the relevant company sees fit with regard thereto provided that, nothing in this paragraph shall or shall be deemed to relieve the Purchaser of any common law or other duty to mitigate any loss or damage incurred by it.
- 10 Neither the Purchaser nor the Company shall be under any obligation to take any action which the Vendors may request in their conduct of any defence of a Third Party Claim in accordance with paragraph 8(a) if, in the Purchaser's opinion acting reasonably, such action would materially

prejudice the business interests or reputation of the business of the Purchaser or its subsidiaries, including the Company.

**ATTESTATIONS DULY EXECUTED BY ALL PARTIES**

Signed by )  
**THOMAS JAMES JOHNSTON** ) T. J. Johnston  
in the presence of: )

Name of Witness John McQuillan  
Occupation Solicitor  
Address RWF House, 5 Renfield Street, Glasgow G2 5EZ

Signed by )  
**MICHAEL CAMPBELL SIMPSON** ) M.C. Simpson  
in the presence of: )

Name of Witness John McQuillan  
Occupation Solicitor  
Address RWF House, 5 Renfield Street, Glasgow G2 5EZ

Signed by )  
**DERMIT SHAW SMITH** ) D.S. Smith  
in the presence of: )

Name of Witness John McQuillan  
Occupation Solicitor  
Address RWF House, 5 Renfield Street, Glasgow G2 5EZ

Signed )  
for and on behalf of )  
**COLLIERS CRE PLC** )  
acting by )

Director Thomas P Tidy

Secretary Howard Goldsobel