

## Commissioned software agreement

THIS AGREEMENT is made the                      day of                      2005

PARTIES:

- (1) HUMAN INTERFACE LIMITED whose registered office is at 5 Jacks Walk Coalville Leicestershire LE67 2XA ('HI')
- (2) CLIENT [LIMITED] [PLC] whose registered office is at  
( 'the Client' )

RECITAL:

HI has agreed to write certain computer programs for the Client and to provide the other services hereinafter described upon the terms and conditions hereinafter contained

NOW IT IS HEREBY AGREED as follows:

### 1 Definitions

In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

'the Programs'	means the applications computer programs to be written by HI pursuant to Clause 4
'the Functional Specification'	means the functional specification [dated] in accordance with which the Programs are to be written a copy of which is annexed hereto
'the Equipment'	means the Client's computer equipment specified in the Schedule or such other equipment as may be agreed between the parties
'the Operating Manuals'	means the operating manuals to be prepared by HI pursuant to Clause 12
'the Services'	means the services to be provided by HI under this Agreement
'the Implementation Plan'	means the time schedule for the completion of the stages of preparation and delivery of the Programs
'Stage'	means a stage of the Implementation Plan
'the Staff'	has the meaning attributed thereto in Clause 20

‘the Price’	means the price to be paid by the Client for the Services
‘the Maximum Cost’	means the sum specified in Schedule 4
‘the Acceptance Date’	means the date on which the Programs are accepted (or deemed to be accepted) by the Client pursuant to Clause 10
‘Ready for Use’	means fully installed, and tested and accepted in accordance with Clause 10
‘the Completion Date’	means the date specified in the Implementation Plan by which HI is to provide the Programs Ready for Use
‘Operating System’	means the computer operating system specified for use with the Programmes and the Services
‘Source Code’	means the primary computer code from which the object code is produced
‘Object Code’	means the output code produced from the source code

## **2 Services to be provided**

HI hereby agrees to:

- (1) write the Programs;
- (2) install the Programs on the Equipment;
- (3) provide the Programs Ready for Use by the Completion Date;

upon the terms and conditions hereinafter contained

## **3 HI’s acknowledgement**

HI acknowledges that the Programs are to be used by the Client in conjunction with the Equipment and the Client’s operating system. HI also acknowledges that it has been supplied with sufficient information about the Equipment and the said operating system to enable it to write the Programs in accordance with the Functional Specification for use with the Equipment and the said operating system.

## **4 Writing of programs**

HI shall write a series of applications programs in language which shall provide the facilities and functions set out in the Functional Specification

## **5 Payment and expenses**

*either:*

### Version A - Fixed price - payment by milestones

(1) The Price shall be paid as to 10 per cent upon the signing of this Agreement [(by way of a deposit)] [(by way of a part payment)] as to  $x$  per cent upon the completion of each Stage (by way of part payments) and as to 10 per cent on the Acceptance Date]

### End Version A

*or:*

### Version B - Time and materials

(1)(a) The Client shall pay HI for the time properly spent (which for the purposes of this Agreement shall include any travelling time spent necessarily by the Staff in the course of providing the Services) and the materials and computer time properly used by the Staff in providing the Services on the terms and conditions set out below

(b) The time spent by the Staff in providing the Services shall be charged at the hourly rates specified in the Schedule. Parts of an hour shall be charged on a pro-rata basis.

(c) The rates of charge for materials and computer time shall be those specified in the Schedule

(d) HI shall be entitled at any time and from time to time to vary any or all of the rates referred to in paragraphs (b) and (c) above to accord with any change in its standard scale rates by giving to the Client not less than 30 days' prior written notice

(e) HI shall maintain full and accurate records of the time spent and materials and computer time used by the Staff in providing the Services in a form to be approved in writing by the Client. HI shall produce such records to the Client for inspection at all reasonable times on request

(f) HI shall render itemised invoices to the Client in respect of the said charges monthly in arrears. Each invoice shall specify the time spent by each member of the Staff and shall give a breakdown of the charges for materials and computer time

### End Version B – Time and Materials

(2) If it shall be necessary for any of the Staff to visit the Client's premises or make any other journeys in the course of providing the Services then the Client shall reimburse HI for all reasonable travelling and subsistence expenses properly incurred in so doing. Apart from minor out-of-pocket expenses, claims for reimbursement of expenses shall be paid by the Client only if accompanied by the relevant receipts

(3) All charges payable by the Client under this Agreement shall be paid within 30 days after the receipt by the Client of HI's invoice therefor

(4) All charges payable under this Agreement are exclusive of Value Added Tax which shall be paid by the Client at the rate and in the manner for the time being prescribed by law

(5) If any sum payable under this Agreement is not paid within 7 days after the due date then (without prejudice to HI's other rights and remedies) HI reserves the right to charge interest on such sum on a day to day basis (as well after as before any judgment) from the date or last date for payment thereof to the date of actual payment (both dates inclusive) at the rate of 8 per cent above the base rate of Bank of England (or any London Clearing Bank as HI may nominate) from time to time in force compounded quarterly. Such interest shall be paid on demand by HI.

## **6 Implementation Plan and delays**

### Version A (Fixed Price)

(1) HI undertakes to use its reasonable endeavours to complete each Stage by the date specified in the Implementation Plan but time shall not be of the essence in relation to such obligations

#### *HI's default*

(2)(a) HI shall provide the Programs Ready for Use on or before the Completion Date

(b) If HI shall fail to provide the Programs Ready for Use by the Completion Date then HI shall pay to the Client as and by way of liquidated damages for any loss or damage sustained by the Client resulting from delay during the period from the Completion Date to the date on which HI provides the Programs Ready for Use the sum of £100 for each week of such delay and pro rata for parts of a week up to a total maximum of £5,000. Subject to the provisions of paragraph (c) below, the payment of such sums shall be in full satisfaction of HI's liability for such delay.

#### *Client's default*

(3) If HI shall be prevented or delayed from performing any of its obligations under this Agreement by reason of any act or omission of the Client (other than a delay by the Client for which the Client is excused under Clause 28) then, notwithstanding anything else contained in this Agreement:

- (a) if as a result any Stage is not completed by the date specified in the Implementation Plan (or by any extended date granted pursuant to any provision of this Agreement) then the part payment due to be paid on the completion of that Stage shall be paid on the scheduled date for such completion (taking into account any extension of time granted pursuant to any provision of this Agreement) as distinct from the actual date of completion;
- (b) the Client shall pay to HI a reasonable sum in respect of any additional time spent and materials and computer time used by the Staff in rectifying any errors in the Programs or the Operating manuals caused by such act or omission of the Client including without limitation the provision of any incorrect or inadequate information or data by the Client; and
- (c) the Client shall pay to HI all other reasonable costs, charges and losses sustained or incurred by HI as a result of such act or omission (and for which HI is not

compensated pursuant to paragraph (a) and (b) above)

HI shall promptly notify the Client in writing of any claim which it may have under this sub-clause giving such particulars thereof as it is then able to provide

End Version A – Fixed Price

Version B (Time and materials)

(1) HI undertakes to use its reasonable endeavours to complete each Stage by the date specified in the Implementation Plan but time shall not be of the essence in relation to such obligations

*HI's default*

(2) (a) HI shall provide the Programs Ready for Use on or before the Completion Date

(b) If HI shall fail to provide the Programs Ready for Use by the Completion Date then HI shall pay to the Client as and by way of liquidated damages for any loss or damage sustained by the Client resulting from delay during the period from the Completion Date to the date on which HI provides the Programs Ready for Use the sum of £100 for each week of such delay and pro rata for parts of a week up to a total maximum of £5,000.

*Client's default*

(3) If HI shall be prevented or delayed from performing any of its obligations under this Agreement by reason of any act or omission of the Client (other than a delay by the Client for which the Client is excused under Clause 28) then, notwithstanding anything else contained in this Agreement:

(a) the Client shall pay HI (at the rates specified in Schedule 6) for any additional time spent and materials and computer time used by the Staff in rectifying any errors in the Programs or the Operating Manuals caused by such act or omission of the Client including without limitation the provision of any incorrect or inadequate information or data by the Client; and

(b) the Client shall pay to HI all other reasonable costs, charges and losses sustained or incurred by HI which are attributable to such act or omission

Any payments due under paragraphs (a) and (b) shall be paid notwithstanding that when added to the other payments due under this Agreement the resultant sum exceeds the Maximum Cost

HI shall promptly notify the Client in writing of any claim which it may have under this sub-clause giving such particulars thereof as it is then able to provide

End of Version B – Time and Materials

**7 Alterations**

(1) If at any time the Client wishes to alter all or any part of the Programs then the Client shall provide HI with full written particulars of such alterations and with such further information as

HI may reasonably require

(2) HI shall then submit to the Client as soon as reasonably practicable a full written quotation for such alterations specifying what changes (if any) will be required to the Price and the Implementation Plan

(3) Upon receipt of such quotation the Client may elect either:

- (a) to accept such quotation in which case this Agreement shall be amended in accordance therewith; or
- (b) to withdraw the proposed alterations in which case this Agreement shall continue in force unchanged (subject to sub-clause (4) below)

(4) HI shall be entitled to make a reasonable charge for considering such alterations and preparing the said quotation and if the Client's request for such alterations is subsequently withdrawn but results in a delay in the performance of the Services then HI shall not be liable for such delay and shall be entitled to an extension of time for performing its obligations equal to the period of the delay

(5) HI shall not be obliged to consider or make any alterations to the Programs save in accordance with the aforesaid procedure

## **8 Changes to the Functional Specification and Operating Manuals**

If any alterations are made to the Programs pursuant to Clause 7 then HI shall make appropriate modifications. The cost of such modifications shall be included in the quotation given under Clause 7

## **9 Delivery and installation**

HI shall at the agreed Stage:

(1) deliver to the Client:

- (a) one copy of the Object Code of the Programs in machine-readable form on appropriate storage media;
- (b) the Operating Manuals

(2) install the Programs on the Equipment

## **10 Testing and acceptance**

(1) If at any time the Client shall commence live running of the whole or any part of the Programs then the Client shall be deemed to have accepted the Programs

## **11 Warranty**

(1)(a) HI warrants that the Programs will after acceptance by the Client provide the facilities and

functions set out in the Functional Specification when properly used with the Equipment and the Client's operating system.

(b) If HI receives written notice from the Client after the Acceptance Date of any breach of the said warranty then HI shall at its own expense and within a reasonable time after receiving such notice remedy the defect or error in question provided that HI shall have no liability or obligations under the said warranty unless it shall have received written notice of the defect or error in question no later than the expiry of 6 months after the Acceptance Date

(c) HI shall have no liability or obligations under the said warranty other than to remedy breaches thereof by the provision of materials and services within a reasonable time and without charge to the Client. If HI shall fail to comply with such obligations its liability for such failure shall be limited to a sum equal to the Price. The foregoing states the entire liability of HI, whether in contract, tort or howsoever for defects and errors in the Programs

(2) The express terms of this Agreement are in lieu of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise, all of which are hereby excluded to the fullest extent permitted by law.

## **12 Operating Manuals**

HI shall provide basic written instructions in how to operate the Software..

## **13 Training**

(1) Training is not supplied unless expressly specified.

## **14 Proprietary rights**

### Version A (Rights retained by HI)

(1) The copyright and all other intellectual property rights of whatever nature in the Programs, the Operating Manuals, the Functional Specification and in all other specifications and documentation relating to the Programs (other than in any material provided by the Client) shall be and shall remain vested in HI

(2) HI hereby grants to the Client with effect from the Acceptance Date a perpetual non-exclusive and non-transferable licence to use and copy the Programs and the Operating Manuals for its own internal business purposes but for no other purpose whatsoever. The Client shall not be entitled to sub-license the use of the whole or any part of the Programs or the Operating Manuals

(3)(a) The Client undertakes to treat as confidential and keep secret all information contained or embodied in the Programs and in all other specifications and documentation relating to the Programs and all information conveyed to the Client by training (hereinafter collectively referred to as 'the Information')

(b) The Client shall not without the prior written consent of HI divulge any part of the Information to any person except:

- (i) the Client's own employees and then only to those employees who need to know the same;
- (ii) the Client's auditors, HM Inspector of Taxes, HM Customs & Excise and any other persons or bodies having a right duty or obligation to know the business of the Client and then only in pursuance of such right duty or obligation;
- (iii) any person who is from time to time appointed by the Client to maintain any equipment on which the Programs are being used (in accordance with the terms of the licence granted pursuant to sub-clause (2)) and then only to the extent necessary to enable such person properly to maintain such equipment

(c) The Client undertakes to ensure that the persons and bodies mentioned in sub-paragraphs (i), (ii) and (iii) of paragraph (b) are made aware prior to the disclosure of any part of the Information that the same is confidential and that they owe a duty of confidence to HI. The Client shall indemnify HI against any loss or damage which HI may sustain or incur as a result of the Client failing to comply with such undertaking

(d) The Client shall promptly notify HI if it becomes aware of any breach of confidence by any person to whom the Client divulges all or any part of the Information and shall give HI all reasonable assistance in connection with any proceedings which HI may institute against such person for breach of confidence

(e) The foregoing obligations as to confidentiality shall remain in full force and effect notwithstanding any termination of the licence granted pursuant to sub-clause (2) or this Agreement

#### End Version A – Rights retained by HI

#### Version B (Rights to vest in the Client)

(1) The copyright and all other intellectual property rights of whatever nature in the Programs, the Operating Manuals, the Functional Specification and in all other specifications and documentation relating to the Programs shall pass to the Client on the Acceptance Date

(2) Notwithstanding sub-clause (1), HI reserves the right to use in any way it thinks fit any programming tools, skills and techniques acquired or used by HI in the performance of this Agreement. HI may also reuse the Programs and provide the Programs to third parties provided that HI does not provide any third party with an identical exact copy of the Programs.

(3) HI shall treat as confidential all information contained or embodied in the Programs (and in any documentation relating thereto, including source code), the Operating Manuals and the Functional Specification and shall not disclose the whole or any part of such information to any third party without the prior written consent of the Client. HI shall ensure that its employees comply with the provisions of this sub-clause. The foregoing obligations shall survive any termination of this Agreement

(4) HI shall deliver to the Client on the Acceptance Date:

- (a) the source code of the Programs in the form of a CD Rom;

- (b) basic operating instructions;

End of Version B – Rights to vest in the client

**15 Indemnity**

The Client will indemnify HI and keep HI fully and effectively indemnified against all costs, claims, demands, expenses and liabilities of whatsoever nature arising out of or in connection with any claim that the use by HI of any information or material supplied by the Client for the purpose of enabling HI to prepare and write the Programs infringes the intellectual property rights (of whatever nature) of any third party

**16 Maintenance**

No maintenance agreement has been entered into.

**17 Representatives**

Each party shall nominate in writing upon the signing of this Agreement the person who will act as its representative for the purposes of this Agreement and who will be responsible for providing any information which may be required by the other party to perform its obligations hereunder

**18 Progress meetings**

The parties shall procure that their respective representatives will meet at least once a month between the date hereof and the Acceptance Date to discuss and minute the progress of the Services

**19 Information**

Without prejudice to the provisions of Clause 3 the Client shall provide all information and documentation reasonably requested by HI to enable HI to prepare and write the Programs. Such information and documentation shall be subject to the provisions of confidentiality contained in Clause 21

**20 The Staff**

The Services shall be provided by the employees of HI named in the Schedule or such other persons as may be approved by the Client in writing from time to time ('the Staff'), such approval not to be unreasonably withheld or delayed

**21 Confidentiality**

(1) Each party shall treat as confidential all information obtained from the other pursuant to this Agreement and shall not divulge such information to any person (except to such party's own employees and then only to those employees who need to know the same) without the other party's prior written consent provided that this Clause shall not extend to information which was rightfully in the possession of such party prior to the commencement of the negotiations leading

to this Agreement, which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this Clause) or which is trivial or obvious. Each party shall ensure that its employees are aware of and comply with the provisions of this Clause. If HI shall appoint any sub-contractor then HI may disclose confidential information to such sub-contractor subject to such sub-contractor giving the Client an undertaking in similar terms to the provisions of this Clause. The foregoing obligations as to confidentiality shall survive any termination of this Agreement

(2) HI will establish and maintain such security measures and procedures as are reasonably practicable to provide for the safe custody of the Client's information and data in its possession and to prevent unauthorised access thereto or use thereof

## **22 Computer facilities**

The Client agrees to provide HI free of charge during the Client's normal working hours (or during such other times as the Client may agree in writing) with such computer facilities (including computer consumables, storage and data preparation facilities) and time on the Equipment as may be necessary to enable HI to prepare, write, test and install the Programs

## **23 Office facilities**

The Client undertakes to provide the Staff with such desks, word processing, copying and other office facilities at the Client's premises as may be necessary to enable HI to fulfil its obligations under this Agreement

## **24 Dress and conformity**

While the Staff attend at the Client's premises they will conform to the Client's normal codes of staff and security practice

## **25 Poaching staff**

The Client shall not without the prior written consent of HI (and so that each of sub-clauses (1) and (2) below shall be deemed to constitute a separate agreement and shall be construed independently of the other):

(1) at any time during the period from the date hereof to the expiry of nine months after the Acceptance Date or the date of termination of this Agreement (as the case may be) solicit or endeavour to entice away from or discourage from being employed by HI any person who is, or shall at any time between the date hereof and the Acceptance Date or the date of such termination be, one of HI's employees engaged in providing the Services provided;

(2) at any time during the period from the date hereof to the expiry of nine months after the Acceptance Date or the date of termination of this Agreement (as the case may be) employ or attempt to employ any person who is, or shall at any time between the date hereof and the Acceptance Date or the date of such termination be, one of HI's employees engaged in providing the Services provided

## **26 Termination**

Notwithstanding anything else contained herein, this Agreement may be terminated:

(1) by HI forthwith on giving notice in writing to the Client if the Client shall fail to pay any sum due under the terms of this Agreement (otherwise than as a consequence of any default on the part of HI) and such sum remains unpaid for *14* days after written notice from HI that such sum has not been paid (such notice to contain a warning of HI's intention to terminate); or

(2) by either party forthwith on giving notice in writing to the other if the other commits any serious breach of any term of this Agreement (other than any failure by the Client to make any payment hereunder in which event the provisions of sub-clause (1) above shall apply) and (in the case of a breach capable of being remedied) shall have failed, within *30* days after the receipt of a request in writing from the other party so to do, to remedy the breach (such request to contain a warning of such party's intention to terminate); or

(3) by either party forthwith on giving notice in writing to the other if the other party shall have a receiver or administrative receiver appointed of it or over any part of its undertaking or assets or shall pass a resolution for winding-up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction shall make an order to that effect or if the other party shall become subject to an administration order or shall enter into any voluntary arrangement with its creditors or shall cease or threaten to cease to carry on business; or

(4) by the Client by giving to HI not less than *30* days' written notice of termination to expire on the scheduled date for completion of any Stage (taking into account any extensions of time granted pursuant to any provision hereof). Upon such termination the Client shall immediately pay to HI all sums accrued due to HI hereunder

## **27 Effects of termination**

(1) Any termination of this Agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination

(2) Upon any termination of this Agreement (howsoever occasioned) HI shall forthwith deliver up to the Client all copies of any information and data supplied to HI by the Client for the purposes of this Agreement and shall certify to the Client that no copies of such information or data have been retained

## **28 Force majeure**

(1) Notwithstanding anything else contained in this Agreement, neither party shall be liable for any delay in performing its obligations hereunder if such delay is caused by circumstances beyond its reasonable control (including without limitation any delay caused by any act or omission of the other party) provided however that any delay by a sub-contractor or supplier of the party so delaying shall not relieve that party from liability for delay except where such delay is beyond the reasonable control of the sub-contractor or supplier concerned. Subject to the party so delaying promptly notifying the other party in writing of the reasons for the delay (and the likely duration of the delay), the performance of such party's obligations shall be suspended during the period that the said circumstances persist and such party shall be granted an extension

of time for performance equal to the period of the delay. Save where such delay is caused by the act or omission of the other party (in which event the rights, remedies and liabilities of the parties shall be those conferred and imposed by the other terms of this Agreement and by law):

- (a) any costs arising from such delay shall be borne by the party incurring the same;
- (b) either party may, if such delay continues for more than 5 weeks, terminate this Agreement forthwith on giving notice in writing to the other in which event neither party shall be liable to the other by reason of such termination save that the Client shall pay HI a reasonable sum in respect of any work carried out by it prior to such termination and for that purpose HI may deduct such sum from any amounts previously paid by the Client under this Agreement (the balance (if any) of which shall be refunded to the Client whether paid by way of a deposit or otherwise)

(2) In the event of any extension of time being granted pursuant to sub-clause (1) the Implementation Plan shall be amended accordingly

### **29 Further assurance**

The parties shall execute and do all such further deeds, documents and things as may be necessary to carry the provisions of this Agreement into full force and effect

### **30 Liability**

(1) HI shall indemnify the Client and keep the Client fully and effectively indemnified on demand against any loss of or damage to any property or injury to or death of any person caused by any negligent act or omission or wilful misconduct of HI, its employees, agents or sub-contractors

(2) The Client shall indemnify HI and keep HI fully and effectively indemnified on demand against any loss of or damage to any property or injury to or death of any person caused by any negligent act or omission or wilful misconduct of the Client, its employees, agents or sub-contractors

(3) Except in respect of injury to or death of any person (for which no limit applies) the liability of HI under sub-clauses (1) and (2) in respect of each event or series of connected events shall not exceed £125,000

(4) Notwithstanding anything else contained in this Agreement HI shall not be liable to the Client for loss of profits or contracts or other indirect or consequential loss whether arising from negligence, breach of contract or howsoever

(5) HI shall not be liable to the Client for any loss arising out of any failure by the Client to keep full and up-to-date security copies of the computer programs and data it uses in accordance with best computing practice

(6) If HI are required to carry out backups of any nature on behalf of the Client then HI will use all reasonable endeavours to comply with such requirement. In the event of any damage to or loss of data then HI's liability shall be limited to the limit contained within this Agreement at

sub-clause (3).

### **31 Waiver of remedies**

No forbearance, delay or indulgence by either party in enforcing the provisions of this Agreement shall prejudice or restrict the rights of that party nor shall any waiver of its rights operate as a waiver of any subsequent breach and no right, power or remedy herein conferred upon or reserved for either party is exclusive of any other right, power or remedy available to that party and each such right, power or remedy shall be cumulative

### **32 Entire agreement**

This Agreement supersedes all prior agreements, arrangements and understandings between the parties and constitutes the entire agreement between the parties relating to the subject matter hereof. No addition to or modification of any provision of this Agreement shall be binding upon the parties unless made by a written instrument signed by a duly authorised representative of each of the parties

### **33 Sub-contracts**

HI shall not, without the prior written consent of the Client (which shall not be unreasonably withheld), enter into any sub-contract with any person for the performance of any part of this Agreement provided that this provision shall not apply to:

- (a) the purchase by HI of equipment and materials; and
- (b) the sub-contract(s) (if any) specified in Schedule 8

HI shall not be relieved from any of its obligations hereunder by entering into any sub-contract for the performance of any part of this Agreement. If requested by the Client, HI shall promptly provide the Client with copies of any sub-contracts

### **34 Notices**

All notices which are required to be given hereunder shall be in writing and shall be sent to the address of the recipient set out in this Agreement or such other address in England as the recipient may designate by notice given in accordance with the provisions of this Clause. Any such notice may be delivered personally or by first class pre-paid letter or facsimile transmission and shall be deemed to have been served if by hand when delivered, if by first class post 48 hours after posting and if by facsimile transmission when despatched

### **35 Interpretation**

In this Agreement:

(1) reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended, extended or re-enacted;

(2) words importing the singular include the plural, words importing any gender include every gender and words importing persons include bodies corporate and unincorporate; and (in each

case) vice versa;

(3) any reference to a party to this Agreement includes a reference to his successors in title and permitted assigns;

(4) the headings to the Clauses are for ease of reference only and shall not affect the interpretation or construction of this Agreement.

### **36 Law**

This Agreement shall be governed by and construed in accordance with the laws of England

### **37 Disputes**

Any dispute which may arise between the parties concerning this Agreement shall be determined as follows:

(1) if the dispute shall be of a technical nature concerning the interpretation of the Functional Specification or relating to the functions or capabilities of the Programs or any similar or related matter then such dispute shall be referred for final settlement to an expert nominated jointly by the parties or, failing such nomination within 14 days after either party's request to the other therefor, nominated at the request of either party by the President from time to time of the British Computer Society. Such expert shall be deemed to act as an expert and not as an arbitrator. His decision shall (in the absence of clerical or manifest error) be final and binding on the parties and his fees for so acting shall be borne by the parties in equal shares unless he determines that the conduct of either party is such that such party should bear all of such fees

(2) in any other case the dispute shall be determined by the High Court of Justice in England and the parties hereby submit to the exclusive jurisdiction of that court for such purpose

### **38 Severability**

Notwithstanding that the whole or any part of any provision of this Agreement may prove to be illegal or unenforceable the other provisions of this Agreement and the remainder of the provision in question shall remain in full force and effect.

*EXECUTED* under hand in two originals the day and year first before written

SIGNED for and on behalf of  
HUMAN INTERFACE LIMITED

By

Signature

Title

Witness

SIGNED for and on behalf of  
CUSTOMER [LIMITED] [PLC]

By

Signature

Title

Witness

SCHEDULE  
THE EQUIPMENT

## SCHEDULE

### IMPLEMENTATION PLAN

[**Note:** This Schedule should show each stage of the preparation of the Programs and the scheduled completion date for each stage. Each stage should be as detailed as possible and should specify what will happen and what will be produced on the completion thereof.]

SCHEDULE  
HI'S PERSONNEL

SCHEDULE

THE PRICE

## SCHEDULE

### CHARGING RATES

[**Note:** The Client should agree the following with HI:

- (a) Hourly rate for each individual or staff category
- (b) Rates of charge for materials and computer time.]

SCHEDULE  
STORAGE MEDIA

SCHEDULE  
SUB-CONTRACTS