DATED _____

(1) <<   >>

(2) <<   >>

APPLICATION SERVICE PROVIDER (ASP) AGREEMENT

THIS AGREEMENT is made the   day of

BETWEEN:

(1)   <<Name of Service Provider>> a company registered in <<Country of Registration>> under number <<Company Registration Number>> whose registered office is at <<Registered Office>> ("the Service Provider") and

(2)   <<Name of Customer>> a company registered in <<Country of Registration>> under number <<Company Registration Number>> whose registered office is at <<Registered Office>> ("the Customer")

WHEREAS:

(1)   The Service Provider hosts and provides access to the Applications described herein in its capacity as an Application Service Provider.

(2)   The Customer wishes to access the Applications described herein as hosted by the Service Provider under a non-exclusive Licence, from a remote location, in return for the payment of a monthly fee and subject to the terms and conditions of this Agreement.

IT IS AGREED as follows:

1.   **Definitions and Interpretation**

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

"Applications"	means the selected software applications provided by the ASP which shall be available to the Customer, as set out in Schedule 2 of this Agreement;
"ASP Infrastructure"	means the Service Provider's computer hardware, firmware, software and communications infrastructure which is used to facilitate access to the Applications by the Customer;
"Business Day"	means any day other than Saturday or Sunday that is not a bank or public holiday;
"Business Hour"	means any time between <<e.g. 09:00>> and <<e.g. 18:00>> on a Business Day, during which the Service Provider is open for business;
"Commencement Date"	means <<Insert date of Agreement>>;
"Confidential Information"	means all business, technical, financial or other information created or exchanged between the Parties throughout the Term of this Agreement;
"Customer Computer Systems"	means the Customer's computer hardware, firmware, software and communications infrastructure through and on which the Applications are to be used;

"Customer Data" means ... e Customer or to third parties ... er under licence which is created ... or otherwise stored in the ASP I...

"Early Termination Fee" means ... ule 1 of this Agreement which ... ustomer in the event that it choo... to terminate this Agreem... 9.3;

"Fees" means ... e Customer in return for access... ASP Infrastructure and suppor... e Service Provider in accord... 12 and Schedule 1 of this Ag...

"Intellectual Property Rights" means ... d future intellectual proper... limited to copyright, trade... sign rights (whether registe... ents, know-how, trade secrets ... database rights;

"Non-Customer User" means ... Customer who may not use the ... of written consent from the Se... -Clause 10.4;

"Service" means ... tions, ASP Infrastructure and su... by the Service Provider to the Cu...

"Users" means ... tomer who shall, from time to ... tions through the ASP Infrast...

1.2 Unless the context otherwise ... e in this Agreement to:

    1.2.1 "writing", and any o... udes a reference to any communication effe... acsimile transmission or similar means;

    1.2.2 a statute or a provis... ference to that statute or provision as amende... evant time;

    1.2.3 "this Agreement" is ... eement and each of the Schedules as amend... he relevant time;

    1.2.4 a Schedule is a sche... and

    1.2.5 a Clause, sub-Claus... rence to a Clause of this Agreement (other th... paragraph of the relevant Schedule.

1.3 The headings used in this A... ience only and shall have no effect upon the interpreta...

1.4 Words imparting the singula... e plural and vice versa.

1.5 References to any gender s... der.

2. **The Service**

2.1 The Service Provider shall, mencement Date, provide the Service to the Custome sis for the duration of the Term of this Agreement an e terms and conditions of this Agreement.

2.2 The Service Provider shall p lications through the ASP Infrastructure and shall use endeavours to ensure that such access is available, wi urs a day, 7 days a week, 365 days a year. This ubject to the exceptions contained in Clauses 4, 12, ent.

3. **Term**

3.1 The Service will be provide er during the term of this agreement (the "Term"), wh the Commencement Date and will continue until < otherwise terminated in accordance with Clause 19

3.2 The Term may be renewed d conditions as set out in this Agreement for a furthe ths] OR [years] upon the mutual consent of both Parti

4. **Fees and Payment**

4.1 The Fees due for the Servic le 1 to this Agreement.

4.2 The Customer shall pay to l Fees due within <<e.g. 30>> days of receipt of an i rovider for the same.

4.3 In the event that the Custo Fees due within the time period specified in sub-Clau ce Provider shall suspend the Customer's use of the ans it deems appropriate, subject to the requiremen disrupt any other of the Customer's operations.

4.4 In the event that the Custom o-Clause 4.3 then, without prejudice to sub-Clause 4.3 interest from the due date until payment is made in fu any judgment, at <<e.g. 3>>% per annum over the B e obtaining at the time.

4.5 The Service Provider reserv ees from time to time as it may deem appropriate. The 30 days' written notice of any such variation. Such fect upon expiry of such notice, subject to the Cu inate this Agreement in accordance with sub-Clause

5. **The Applications**

5.1 The Applications to which e access are detailed in Schedule 2 to this Agreeme

5.2 The Customer is free durin ement to either add to or remove from the selection to availability of required applications from the Ser Fees shall be amended accordingly in the event of s

6. **Training**

   In the event that any Users require [text obscured] the Applications, it shall be the responsibility of the Customer [text obscured] are appropriately trained and to bear any costs associated w[text obscured] Service Provider shall not provide any training of any kind [text obscured] ropriate courses and / or materials].

7. **Security**

   7.1 The Service Provider shall [text obscured] s the ASP Infrastructure includes <<Insert a full de[text obscured] asures such as firewalls, reserve power, redundant s[text obscured]

   7.2 The Service Provider shall [text obscured] ackups of all data on the ASP server. Such backups [text obscured] rt description of media>>. All <<Insert description of [text obscured] d <<Insert description of storage, e.g. fireproof safe, [text obscured]

8. **Maintenance**

   8.1 The Service Provider shall b[text obscured] ntenance and upgrades to the ASP Infrastructure which[text obscured] e required.

   8.2 Subject to the provisions of [text obscured] r shall be responsible for all maintenance and upgrad[text obscured] puter Systems which may from time to time be require[text obscured]

   8.3 [Whenever possible, the Se[text obscured] e its best and reasonable endeavours to undertake [text obscured] side of the Customer's business hours.]

   OR

   [Unless maintenance is corr[text obscured] ance shall only take place at scheduled times. The sc[text obscured] es under this Agreement shall be <<Insert relevan[text obscured] ormation>>. Corrective maintenance shall be under[text obscured] ed.]

   8.4 Unless maintenance is corr[text obscured] ice Provider shall provide at least << >> Business D[text obscured] nenance which may affect the Customer's use of the [text obscured] rovider shall use it's best and reasonable endeavours [text obscured] ce as possible in the case of corrective maintenance[text obscured] ice may not always be possible.

   8.5 Where maintenance will dis[text obscured] vice Provider shall aim to complete all necessary wo[text obscured] ss Hours or as soon as possible thereafter where re[text obscured] t possible.

   8.6 Whenever possible, the Ser[text obscured] de a workaround solution to the Customer to enable t[text obscured] d use of the Service or to enable use that is as clos[text obscured] ible under the prevailing circumstances.

9. **Software Licences**

9.1 The Customer shall use ████████ a non-exclusive, non-transferrable licence, as se████████. This licence permits a maximum number of << >>████████ Applications at any given time and such access is o████████ <Insert description of the means of access, e.g. HTML████████ etc.>>.

9.2 All Applications provided b████████ are the property of the Service Provider unless oth████████ covered by the terms of the licence included in this A████████cations are the property of a third party, the relevant li████████tions shall be annexed to this Agreement in Schedule ███.

9.3 Where Applications are the████████rty, the Service Provider warrants that they have all r████████-licence such applications to the customer for the pu████████nt and for use under its terms.

10. **Applications and ASP Infrastruct**██

10.1 Under this Agreement, as ████████ 9.1 above, a maximum number of << >> Users ████████cations through the ASP Infrastructure at any given ti██.

10.2 Users' access to the Ap████████P Infrastructure shall be controlled by means of <<In████████ss control, e.g. username and password, IP validation ████.

10.3 Should the Customer requir████████m number of Users, such an increase shall be perm████████ discretion of the Service Provider. The Service ████████ right to increase Fees proportionately, in accordan████████ e event of an increase in the maximum number of Us██████.

10.4 Use by Non-Customer Use████████er this Agreement in the absence of express written ████████e Provider, such consent not to be unreasonably wi████████ovider may require such details as the reason that ac████████ and ASP Infrastructure is required by the Non-Custo████████ Non-Customer User and other information which may████████ time.

10.5 The Customer shall use the████████ the purposes of carrying on its business of <<Insert ████████er's business to the level of detail reasonably required████████>>.

10.6 [The Service Provider shall████████ use of the Applications and ASP Infrastructure from████████ompliance with the terms and conditions of this Agr████████easonable Usage Policy annexed to this Agreement ████████vent that the Customer's use of the Service exceed████████able by the Reasonable Usage Policy, the Service ████████ight to increase Fees, in accordance with Schedule ████████riate, supplying 30 days' written notice to the Custom██.

10.7 The Customer may only acc████████ailed in Schedule 2 to this Agreement. No access to████████P Infrastructure shall be

permitted in the absence   mission from the Service Provider.

10.8 The Customer is exclusivel   of the Service, including the conduct of individual   de any authorised Non-Customer Users) and mus   in accordance with this Agreement. The Custome   e Provider immediately of any breaches of this Agreem   n-Customer Users.

10.9 Access to the Applications is   <<Insert description of the means of access, e.g. HT   vare etc.>>, via the ASP Infrastructure. Under no ci   ustomer download, store, reproduce or redistribute   other part of the ASP Infrastructure, without first   written permission of the Service Provider.

10.10 The Customer's use of the A   astructure may, from time to time, be governed by   rules and requirements external to the terms and   eement. It shall be the Customer's exclusive respo   eir use of the Service is in compliance with any such la

10.11 The Customer's use of the S   o the following limitations, any of which may be waiv   vider giving their express written consent:

10.11.1 The Customer may   e Applications or the ASP Infrastructure for th   ing the business of an Application Service P

10.11.2 The Customer may   oduce the Applications or the ASP Infrastructur   nd

10.11.3 The Customer may   sed third party to access the Applications or th

10.12 Neither the Customer, nor   may, in the absence of written consent from the Se

10.12.1 Make changes of   plications or the ASP Infrastructure; or

10.12.2 Attempt to correct a   t in the Applications or the ASP Infrastructure.

11. Customer Computer Systems

11.1 Prior to commencement of   Provider shall conduct a full inspection and inventor   puter Systems to ensure compatibility with the Applic   cture. Where appropriate, the Service Provider may   for upgrades and other alterations. Any such recon   esented in a written report to the Customer.

11.2 The Service Provider may   e physical access to the Customer Computer Syste   f inspecting, testing and upgrading the Customer Co   ure their compatibility with the Applications and ASP I   ss shall be granted by the Customer only upon receipt   n the Service Provider.

11.3 The Service Provider shall [   ] during the term of this Agreement to access the [   ] systems remotely for the purposes of inspecting, t[   ] the Customer Computer Systems to ensure their [   ] Applications and ASP Infrastructure.

11.4 Where, in the opinion of th[   ] tomer Computer Systems are likely to cause disruptio[   ] ure, the Service Provider may request that the Custo[   ] e ASP Infrastructure until advised that reconnection [   ] ce Provider may require changes such as upgrades[   ] ment to be made to the Customer Computer System[   ]

11.5 In the event of any unauth[   ] stomer of Applications or the ASP Infrastructure, in b[   ] or otherwise the Service Provider shall be entitled to[   ] nitely or temporarily as it deems appropriate and to[   ] ment in accordance with Clause 19 below.

11.6 The Customer shall ensu[   ] Computer Systems are connected to a third party [   ] service, communications system or network in such[   ] ce may be accessed by unauthorised third parties.

12. **Support**

12.1 The Service Provider shall [   ] [and live online] support services during their normal [   ] ert normal business hours e.g. 09:00 to 18:00 Monday[   ] ss hours to [include] OR [exclude] public holidays. T[   ] the Service Provider shall relate only to the Applicatio[   ] ure. Any problems which are related to Customer [   ] ust be resolved by the Customer's own support sta[   ]

12.2 In addition to the standar[   ] in sub-Clause 12.1, the Service Provider shall also [   ] [and live online] support services outside of their nor[   ] sert description of support times, e.g. 24 hours, 08:00[   ] dditional support services shall be available at additi[   ] er at the rates set out in Schedule 1.

12.3 When seeking support the[   ] its best and reasonable endeavours to provide the[   ] sible to aid the Service Provider in diagnosing an[   ] Applications or the ASP Infrastructure.

12.4 The Service Provider shall [   ] rt problems within << >> Business Hours or as soon[   ] ere resolution in that time is not possible.

12.5 Whenever possible, the Se[   ] de a workaround solution to the Customer to enable t[   ] d use of the Service or to enable use that is as clos[   ] ible under the prevailing circumstances.

13. **Intellectual Property**

13.1 Subject to sub-Clause 13.2 [...] Rights subsisting in the Applications and the ASP [...] any supporting software and documentation are the p[...] rovider. For the purposes of this Clause 13, 'Applicati[...]ure' along with supporting software and documentation [...] manner in which all such material is compiled and pre[...]

13.2 Where expressly indicated [...] erty Rights subsisting in certain Applications includin[...] e and documentation may be the property of named th[...]

13.3 The Customer shall not e[...] after the expiry of this Agreement permit or caus[...]ement of any Intellectual Property Rights covered by [...] by the Customer and its employees of the Service sh[...]ns of this Agreement.

13.4 The Customer shall not, i[...] Service Provider's written consent, reproduce, adapt, [...]eer, or make available to any third party any of the A[...] the ASP Infrastructure, or any other material associat[...] where such activity goes beyond the scope of action[...]ns and conditions of this Agreement.

13.5 Where the Customer either [...] any breach of Intellectual Property Rights covered by [...] be under a duty to inform the Service Provider of such [...]

14. **Customer Data**

14.1 Subject to sub-Clause 14[...] erty Rights subsisting in Customer Data are and sha[...] he Customer.

14.2 Certain Customer Data ma[...] es. In such cases, the Customer warrants that all [...] used with the consent of relevant third parties.

15. **Confidentiality**

15.1 During the Term of this Ag[...]rmination or expiration of this Agreement for any rea[...]er shall use its best and reasonable endeavours to e[...] Data is kept secure and confidential. The Service P[...]bsence of express written consent from the Customer, [...]a to any third party unless such disclosure is required b[...] Customer shall be notified in writing of the disclosure.

15.2 During the Term of this Agr[...]ation or expiration of this Agreement for any reason [...]ert Period>> starting on <<Date>>], the following [...] to the Party receiving Confidential Information (th[...]om the other Party (the "Disclosing Party").

15.3 Subject to sub-Clause 15.4, [...]

15.3.1 may not use any Co[...] any purpose other than the performance of t[...]s Agreement;

15.3.2 may not disclose any ___ to any third party except with the prior written ___ Party; and

15.3.3 shall make every eff___ ___rised use or disclosure of the Confidential Infor___

15.4 The obligations of confiden___ ___lause 15 (excluding sub-Clause 15.1) shall not apply ___mation that:

15.4.1 is in the possession ___ ___disposal of the Receiving Party or is published ___ ___public domain prior to its receipt by the Receiv___

15.4.2 is or becomes public ___ ___nfidential basis through no fault of the Receiving ___

15.4.3 is required to be disc___ ___aw or regulation; or

15.4.4 is received in good f___ ___rty from a third party who, on reasonable enq___ ___Party claims to have no obligations of confide___ ___rty in respect thereof and who imposes no obli___ ___on the Receiving Party.

15.5 Without prejudice to any o___ ___the Disclosing Party may have, the Receiving Party ___ees that in the event of breach of this Clause the ___ ___without proof of special damage, be entitled to a___ ___quitable remedy for any threatened or actual breach ___ ___Clause in addition to any damages or other remedies ___titled.

15.6 The obligations of the Partie___ ___f this Clause shall survive the expiry or the terminatio___ ___spective of the reason for such expiry or termination.

16. **Liability**

16.1 Subject to Clause 17 of th___ ___ice Provider shall not be liable to the Customer for an___ ___ial loss the Customer may suffer even if such loss is ___ ___or if the Service Provider has been advised of the pos___ ___ncurring it.

16.2 The Service Provider's enti___ ___r in respect of any breach of its contractual obligation ___ ___anty, any representation, statement or tortious act or ___ ___gence arising under or in connection with this Agreem___ ___< >>.

16.3 Notwithstanding any other p___ ___nt, the Service Provider's liability to the Customer ___ ___sulting from the Service Provider's own negligence ___ ___ployees, agents or sub-contractors shall not be limit___

17. **Indemnity**

17.1 The Customer will fully in___ ___ovider against all costs, expenses, liabilities, losses, ___ ___s that the Service Provider may incur or be subject to a___ ___llowing:

17.1.1 The Customer's mis___ ___ASP Infrastructure or any other element of the ___

17.1.2 The Customer's brea[...]

17.1.3 The Customer's negl[...]fault.

17.2 The Service Provider will [...] stomer against all costs, expenses, liabilities, losses, [...] ts that the Customer may incur or be subject to as [...] Provider's breach of this Agreement.

18. Force Majeure

18.1 Neither the Service Provide[...]ll be liable for breaching this Agreement where that b[...] Majeure.

18.2 Force Majeure refers to any [...] reasonable control of the parties and includes, but [...] r failure, internet service provider failure, industrial [...] heft, fire, flood, storms, earthquakes, acts of terroris[...]ental action or any other event that is beyond the co[...]on.

19. Termination

19.1 The Service Provider rese[...]ate this Agreement or to suspend the Service in the f[...]

19.1.1 If the Customer fa[...] under Clause 4 of this Agreement;

19.1.2 If the Customer is in [...]is Agreement;

19.1.3 If the Customer beco[...]untary arrangement under Section 1 of the Inso[...]

19.1.4 If the Customer is [...]s within the definition of Section 123 of the In[...]

19.1.5 If the Customer [...]nager, administrator or administrative receiv[...] a substantial part of its undertakings, asset[...]sed a resolution for its winding up; or is the[...]esented to a court for its winding up or for an [...]

19.2 The Customer reserves the [...] greement in the following circumstances:

19.2.1 If the Service Provide[...]s of this Agreement;

19.2.2 If the Service Provide[...]f a voluntary arrangement under Section 1 of th[...]

19.2.3 If the Service Provide[...]bts within the definition of Section 123 of the In[...]

19.2.4 If the Service Prov[...]anager, administrator or administrative receiv[...] a substantial part of its undertakings, asset[...]sed a resolution for its winding up; or is the[...]esented to a court for its winding up or for an [...]

19.3 The Customer may also ter[...] the event of an increase

in Fees under sub-Clause   such an increase to be unreasonably high. This rig   subject to the Customer providing 30 days' written n   y Termination Fee set out in Schedule 1.

19.4 Within <<e.g. 7>> Busines   ion of this Agreement in accordance with this Clause   Agreement, the Customer shall uninstall or otherwise   ccess to the Applications and ASP Infrastructure inclu   lient software supplied by the Service Provider for tha   ately following taking such action, the Customer shall   vider in writing that such action has been taken. [Th   have the right to dispatch a representative to the Cust   cation purposes.]

20. **Notices**

20.1 All notices under this Agreem

20.2 Notices shall be deemed to

20.2.1 when delivered, if d   her messenger (including registered mail) durin   s of the recipient; or

20.2.2 when sent, if transmi   a successful transmission report or return recei

20.2.3 on the fifth busines   g, if mailed by national ordinary mail, postag

20.2.4 on the tenth busine   ng, if mailed by airmail, postage prepaid.

20.3 In each case notices should   ost recent address, e-mail address, or facsimile numbe   rty.

21. **Relationship of Parties**

Nothing in this Agreement shall cr   create, a partnership, the relationship of principal and agent,   oyee between the Service Provider and the Customer.

22. **Assignment**

Neither Party shall assign, transfer   other manner make over to any third party the benefit and/or   nt without the prior written consent of the other, such consent   ithheld.

23. **Severance**

The Parties agree that, in the ev   of the provisions of this Agreement is found to be unlawfu   nenforceable, that / those provisions shall be deemed sever   of this Agreement. The remainder of this Agreement shall b

24. **Entire Agreement**

24.1 This Agreement embodie   entire agreement and understanding between the   s all prior oral or written agreements, understanding   g to the subject matter of this Agreement. Neither P   rely on any agreement, understanding or arrangeme   h in this Agreement, save for any representation made

24.2 Unless otherwise express   in this Agreement, this Agreement may be varied o   d by both of the Parties.

25. **No Waiver**

The Parties agree that no failure b   e the performance of any provision in this Agreement shall   he right to subsequently enforce that provision or any other   nt. Such failure shall not be deemed to be a waiver of an   ent breach and shall not constitute a continuing waiver.

26. **Non-Exclusivity**

The relationship between the Parti   t is and shall remain non-exclusive. Both parties are free to e   ships with other parties.

27. **[Dispute Resolution (Arbitration)**

27.1 It is agreed that where any   elating to this Agreement arises between the Parties   rred to the arbitration of a single arbitrator with appro   d practical experience to resolve the particular disput

27.2 The arbitrator shall be agree   e event of failure to agree shall be appointed by the P   ing of the Law Society of England and Wales.

27.3 The arbitration shall take p   d shall be in accordance with the Arbitration Act 1996   modification of that Act for the time being in force.

27.4 The Parties shall promptly   all information reasonably requested by him relating   te, imposing appropriate obligations of confidence.

27.5 The Parties shall require th   easonable endeavours to render his decision within   eceipt of the information requested or if this is not p   er as may reasonably be practicable. The Parties s   the arbitrator to achieve this objective.

27.6 The Parties shall share the   he arbitrator equally. The decision of the arbitrator sha   on both Parties.

27.7 [The Parties agree to exclu   or appeal to the courts of England and Wales concer   rising in the course of the arbitration.]]

28.   **Law and Jurisdiction**

   28.1   This Agreement shall be gov   gland and Wales.

   28.2   [Any dispute between the Pa   eement shall fall within the
          jurisdiction of the courts of E

IN WITNESS WHEREOF this Agreement   ed the day and year first
before written

SIGNED by

<<Name and Title of person signing for Se
for and on behalf of <<Service Provider's N

In the presence of
<<Name & Address of Witness>>
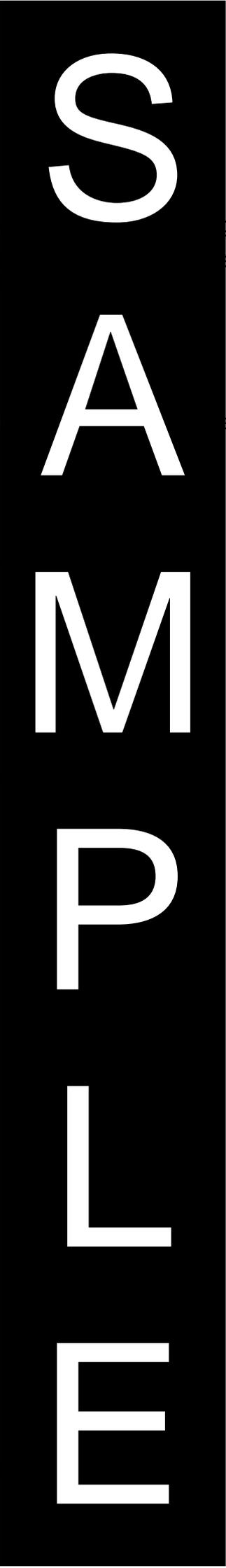
SIGNED by

<<Name and Title of person signing for Cu
for and on behalf of <<Customer's Name>>

In the presence of
<<Name & Address of Witness>>

Fees

1. **Service Fees**

   <<Insert details of fees payable for

2. **Licence Fees**

   <<Insert details of licence fees pay   , e.g. per Application, per User>>

3. **Fee Increases**

   <<Insert details of how fees may b   ircumstances specified in the Agreement>>

4. **Additional Support Charges**

   <<Insert details of fees for additiona   lause 10>>

5. **Additional Costs**

   <<Insert details of any additional   ay be payable, e.g. ASP Infrastructure insurance etc.>>

6. **Early Termination Fee**

   <<Insert details of the Early Term   the Customer under sub-Clause 19.3>>

Applications

<<Insert details of the Applications availa   so include any additional special terms and conditions>>

Third Party Software Licenses

<<Insert details of third party software and   nt licenses>>

[SC

[Reasonable Usage Policy]

<<Insert details of the Service Provider's   cy, if relevant. If no such
policy exists, remove this Schedule>>