

2950904

We hereby certify that this is a true
and accurate copy of the original
dated this 03 day of October 2007

Osborne Clarke
Osborne Clarke
Apex Plaza
Forbury Road
Reading RG1 1AX

Agreement

relating to the sale and purchase of the whole of the issued
share capital of UBM Limited

- (1) Robin Alvarez
- (2) XKO Group plc

Dated 18th August 2005

4/10/07

Osborne Clarke

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JMC/0898819/784600



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Escrow Letter

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Service Agreement

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Consultancy Agreement

Guaranteed Loan Note Instrument and Subordinated Loan Note Instrument

Directors' letters of resignation of Mary Tinkler, Jonathan Bloch, Peter Robinson, Alastair Taylor

Secretary's letter of resignation

Letter of resignation of auditors

Board minutes

Inter Company Loan Agreement

2nd Debenture

2nd Charge

Orderly Market Agreement

Deed of Subordination

Vendor Incentives List

Form of Bank Guarantee

This Agreement is made on

18th August 2005

Between:

- (1) The person whose name and address is set out in Schedule 1 (the "Vendor"), and
- (2) **XKO Group plc** (registered in England and Wales with company number 02950904) whose registered office is at Systems House, Foundry Court, Gogmore Lane, Chertsey, Surrey KT16 9AP ("XKO").

Background:

The Vendor has agreed to sell and XKO has agreed to purchase the Shares (as defined herein) on the terms and conditions set out in this Agreement

This Agreement witnesses as follows

1 Definitions and interpretation

- 1.1 In this Agreement, unless the context otherwise requires, the following definitions shall apply:

"Accounts" means the audited balance sheet of the Company as at the Accounts Date and the audited profit and loss account of the Company for the financial period ended on the Accounts Date, including all documents required by law to be annexed to them

"Accounts Date" means 30 June 2005.

"A Consideration" means the Series "A" Guaranteed Loan Notes, First Earn Out Shares and Series "A" Subordinated Loan Notes to be paid and issued (as the case may be) to the Vendor in accordance with sub-clauses 5.4 to 5.10 and calculated by reference to the First Earn-out Accounts

"Act" means the Companies Act 1985

"Admission" means admission of the Initial Consideration Shares and the Placing Shares to trading on AIM becoming effective in accordance with the AIM Rules

"Agreement" means this Agreement executed as a deed (including any schedule or annexure to it which shall have the same force and effect as if set out in the body of this Agreement)

"AIM" means the Alternative Investment Market of the London Stock Exchange.

"AIM Rules" means the rules of the London Stock Exchange and those other of its rules which govern admission to trading on and the regulation of AIM.

"Auditors" means the Company's auditors from time to time

"the Bank" means Barclays Bank plc.

"B" Consideration" means the Series "B" Guaranteed Loan Notes, Second Earn Out Shares and Series "B" Subordinated Loan Notes to be paid and issued (as the case may be) to the Vendor in accordance with sub-clauses 6.4 to 6.10 and calculated by reference to the Second Earn-out Accounts

"Broker" means Robert W Baird Limited of Mint House, 77 Mansell Street, London, E1 8AF.

"Budget" means the budget of the Company prepared by the Vendor for the First Earn-out Period and the Second Earn-out Period in the agreed form.

"Business Day" means a day (other than a Saturday, a Sunday or a public holiday) on which clearing banks are open for business in the City of London

"Claim" means a Warranty Claim or a claim by XKO against the Vendor under the Tax Covenant or the indemnities contained in clause 16 (as the case may be)

"Client" means any person to whom or which the Company shall at any time during the 12 month period prior to the Relevant Date have provided Restricted Business

"Circular" means the circular in agreed form to be sent by XKO to its shareholders comprising an admission document for the purposes of the AIM Rules and containing, inter alia, notice of the Extraordinary General Meeting of XKO ("**the Notice of EGM**") to be convened for the purposes of the passing of the Resolution and details of the acquisition by XKO of the Shares.

"Company" means UBM Limited, details of which are set out in Schedule 2

"Completion" means the completion of the sale and purchase of the Shares under this Agreement

"Conditions" means those matters set out in sub-clause 2.1 and "**Condition**" shall mean any of them.

"Consideration" means the Initial Consideration, and, to the extent that the same become payable, the "A" Consideration and the "B" Consideration and the amount of any Working Capital Excess determined and paid in accordance with Schedule 11

"Consultancy Agreement" means the consultancy agreement in the agreed form to be entered into between the Company and the Vendor on the 1 April 2007

"Disclosed" means fairly disclosed to XKO expressly for the purposes of this Agreement in the Disclosure Letter and "**fairly disclosed**" means disclosed with such particularity to enable XKO to make a reasonable assessment of the impact on the Company

"Disclosure Letter" means the letter of the same date as this Agreement in the agreed form from the Vendor to XKO and delivered to XKO's Solicitors immediately prior to

the execution of this Agreement, together with any attachments.

"Earn-out Accounts" means the First Earn-out Accounts and the Second Earn-out Accounts.

"Earn-out Periods" means the First Earn-out Period and the Second Earn-out Period and **"Earn-out Period"** means either of them.

"EBIT" means the Operating Profits of the Company before interest (received or paid), and Tax, excluding Operating Exceptional Items (if any) but after depreciation and amortisation of goodwill

"EBIT Certificate" means a certificate of the EBIT for each Earn-out Period issued in accordance with clauses 5 or 6

"EBITDA" means operating profits of the relevant entity before interest (received or paid), depreciation and amortisation of goodwill

"Encumbrance" means any interest or equity of any person (including any right to acquire, option or right of pre-emption or conversion) or any mortgage, charge, pledge, lien, assignment, hypothecation, security interest, title retention, or any other security agreement or arrangement, or any agreement to create any of the above

"Escrow Completion" means the Completion, subject to the terms of the Escrow Letter, of the sale and purchase of the Shares by the performance by the parties of their respective obligations under clause 9

"Escrow Letter" means the escrow letter in the agreed form to be signed by the parties and delivered in accordance with clause 9

"Financial Assistance Actions" means all actions required to be taken (by XKO, the Company, its directors or the auditors as the case may be) pursuant to Sections 155 to 158 inclusive of the Act in order to enable the Company to enter into the security and other documentation set out in Part 2 of Schedule 6

"First Earn-out Accounts" means the Company's unaudited profit and loss account and balance sheet in respect of the First Earn-out Period and prepared in accordance with Schedule 8

"First Earn-out Payment Date" means the 15 July 2006 or, if later, the date falling 10 Business Days after the earlier of the acceptance by the parties of or the final determination of the First Earn-out Accounts and the EBIT Certificate in accordance with Schedule 8

"First Earn-out Period" means the 8 month period commencing on 1 August 2005 and ending on 31 March 2006

"FSMA" means the Financial Services and Market Act 2000

"Governmental Authority" means any governmental authority in the United

Kingdom, and includes any district, county, state, provincial, municipal or similar authorities

"Guarantee" means any guarantee, suretyship, indemnity, bonding liability or similar contingent liability given or undertaken by a person to secure or support the obligations of any third party

"Guaranteed Loan Notes" means the Series "A" Guaranteed Loan Notes and the Series "B" Guaranteed Loan Notes in the agreed form to be issued by XKO to the Vendor in consideration of the purchase of the Shares in accordance with this Agreement and references to Series "A" Guaranteed Loan Notes and Series "B" Guaranteed Loan Notes shall be construed accordingly as references to each such series of Guaranteed Loan Notes.

"Guaranteed Loan Note Instrument" means the instrument pursuant to which the Guaranteed Loan Notes are constituted, substantially in the form set out in Schedule 10

"ICTA" means Income Tax and Corporation Taxes Act 1988.

"ITEPA" Income Tax (Earnings and Pensions) Act 2003

"IT Systems" means all computer systems, communication systems, software and hardware

"Indemnities" means the indemnities set out in clause 16

"Initial Consideration" means the payment of £15,981,829.80 in cash and the allotment and issue of the Initial Consideration Shares and the Placing Shares

"Initial Consideration Shares" means the 5,882,353 XKO Shares to be issued by XKO in satisfaction of part of the Initial Consideration

"Intellectual Property" means patents, trade marks or names whether or not registered or capable of registration, registered designs, design rights, domain names, copyrights, database rights, the right to apply for and applications for any of the preceding items, together with the rights in inventions, processes, software (including to the extent that the same exists all source and object code), know-how, trade or business secrets, confidential information Internet domain names, Internet and World Wide Web URLs or addresses, or any process or other similar right or asset capable of protection, all licenses of the intellectual property referred to above, all future income and proceeds from any such intellectual property and all rights to damages and profits by reason of the infringement of any such intellectual property

"Lease" means the lease (including underleases) under which the Property is held, particulars of which are set out in Part 2 of Schedule 2

"Loan Notes" means the subordinated Loan Notes and the Guaranteed Loan Notes

"London Stock Exchange" means London Stock Exchange plc

"Lloyds Guarantee" means the Guarantee to be entered into by Lloyds TSB Group plc ("Lloyds") in favour of the Vendor, pursuant to which Lloyds shall guarantee the obligations of XKO under the Guaranteed Loan Notes

"Managers" means each of the persons whose names are set out in the Vendor Incentive List in agreed form

"Material Adverse Change" any occurrence which would give rise to a Material Claim in the event that but for clause 2.4(c) XKO were entitled to proceed to Completion without prejudice to its right of action in respect of the relevant Claim

"Material Claim" a Claim which would give rise to a liability on the Vendor in excess of the sum of £250,000

"Non-Tax Claim" means any Warranty Claim which is not a Tax Claim (as defined in the Tax Schedule).

"Non-Tax Warranties" means the warranties set out in Schedule 3

"notice" includes any notice or demand

"Notice of EGM" means the notice of an Extraordinary General Meeting in the agreed form of XKO to be held on 5 September 2005 as set out in the Circular

"Open Source Materials" means any publicly available software or material that is distributed or licensed.

- (a) as open source software;
- (b) under a licensing or distribution arrangement that requires, as a condition of use, modification and/or distribution of such software or material, that other software incorporated into, derived from or distributed with such software or material be:
 - (i) disclosed or distributed in source code form,
 - (ii) licensed for the purpose of making derivative works; or
 - (iii) redistributable at no charge, or
- (c) under a licensing or distribution arrangement similar to (a) or (b) including but not limited to the GNU General Public License (GPL), GNU Lesser General Public License (LGPL), Mozilla Public License, the Artistic License, the Netscape Public License, the Apache License and the Sun Community Source License (SCSL) and the Sun Industry Standards License (SISL).

"Operating Exceptional Items" means all and any management charges paid and/or accrued by the Company for the benefit of XKO and including, without limitation, any sum declared and/or paid as referred to in clause 11.5 and any other items of an exceptional or extraordinary nature

"Operating Profits" means the operating profit of the Company

"Payment Regulations" the Personal Pension Schemes (Payments by Employers) Regulations 2000 (SI 2000/2692).

"Pension Scheme" means the stakeholder pension scheme with Abbey plc (of which four employees are currently members) operated by the Company.

"Permitted Distribution" means any amount or amounts paid by the Company to XKO (by way of dividend, loan or management charge) up to an aggregate sum of £1,000,000 in respect of any financial yearpro rated for any financial period of less than one year

"Placing Agreement" means the agreement in the agreed form dated 18 August 2005 and made between XKO and the Broker relating to the placing by the Broker, as agent for and on behalf of XKO, of the Placing Shares at the Placing Price

"Placing Price" means 85p per Placing Share.

"Placing Shares" means 7,905,883 XKO Shares

"Policies" means all insurance policies maintained by the Company at the date of this Agreement and **"Policy"** means any of them

"Post Sale Group" means XKO's Group following Completion which shall include the Company and UBML.

"Property" means the leasehold property particulars of which are set out in Part 2 of Schedule 2

"Prospective Client" means any person who or which was at any time during the 12 month period prior to the Relevant Date negotiating with or has been subject to any presentation or pitch by the Company for the provision of any Restricted Business

"Relevant Date" means the earlier of the Termination Date and 18 August 2007.

"Resolutions" means the ordinary resolutions of XKO as set out in the Notice of EGM.

"Restricted Business" means the provision of revenue assurance services and solutions to any energy utilities industry as at the Relevant Date

"Restricted Period" means the period commencing on Completion and ending three years from the Relevant Date.

"Restrictive Covenant Agreements" the conditional agreements in substantially agreed form between the Company, the Vendor and all or any of those persons on the Vendor Incentive List in the agreed form

"Second Charge" means the Second Charge over the shares of the Company from XKO in favour of the Vendor in the agreed form

"Second Debenture" means the Second Debenture over the assets of the Company from the Company in favour of the Vendor in the agreed form

"Second Earn-out Accounts" means the Company's unaudited profit and loss account and balance sheet in respect of the Second Earn-out Period and prepared in accordance with Schedule 8

"Second Earn-out Payment Date" means the 15 July 2007 or if later the date falling 10 Business Days after the earlier of the acceptance by the parties of or the final determination of the Second Earn-out Accounts and the EBIT Certificate in accordance with Schedule 8

"Second Earn-out Period" means the year from 1 April 2006 to 31 March 2007

"Security Documents" means together (i) the Inter Company Loan Agreement (ii) the Second Debenture (iii) the Second Charge (iv) all other security documents required to be executed in connection with the Financial Assistance Actions

"Senior Employee" means any person who is or was during the 12 month period prior to the Relevant Date employed by the Company in a senior managerial, sales, marketing, senior customer advisory or senior customer-facing capacity or who was a consultant to or a director of the Company or any person who was so employed or retained by the Company in each case whose fees and/or emoluments exceed £40,000 per annum at the relevant time

"Service Agreement" means the service agreement in the agreed form to be entered into between the Company and the Vendor.

"Shares" means all of the issued shares of the Company at Completion, being as set out in Part 1 of Schedule 2 and held by the Vendor as per Schedule 1.

"Subordinated Loan Notes" means the Series "A" Subordinated Loan Notes and the Series "B" Subordinated Loan Notes in agreed form to be issued by XKO to the Vendor in consideration of the purchase of the Shares in accordance with this Agreement and references to Series "A" Subordinated Loan Notes and Series "B" Subordinated Loan Notes shall be construed accordingly as references to each such series of Loan Notes.

"Subordinated Loan Note Instrument" means the instrument executed or to be executed by the Company pursuant to which the Subordinated Loan Notes are constituted, substantially in the form set out in Schedule 9

"Tax Covenant" means the covenant given by the Vendor under Part 3 of the Tax Schedule.

"Tax Schedule" means the provisions of Schedule 5 of this Agreement

"Tax Warranties" means the warranties set out in Part 2 of the Tax Schedule and each of them

"Tax", "Taxes" or "Taxation" shall have the meaning set out in the Tax Schedule

"Termination Date" means the date on which the Vendor's employment with the Company ceases for whatever reason other than where cessation is a result of:

- (a) the application of the Transfer of Undertakings (Protection of Employment) Regulations 1981;
- (b) the transfer of employment to any XKO Group Company, or
- (c) the reconstruction or amalgamation of the Company,

in which case **"Termination Date"** means the cessation of employment with the successor employer (but subject to the application of the provisions of sub-clauses (a) – (c) above inclusive mutatis mutandis)

"Territory" means the United Kingdom

"UBML" means Utility Billing & Metering Limited (company number. 04826015) whose registered office is at 1st Floor, Hertsmere House, Shenley Road, Borehamwood, Hertfordshire

"VAT" means Value Added Tax.

"Vendor Associate" shall have the meaning given to it in the Tax Schedule.

"Vendor's Solicitors" means Mishcon de Reya of Summit House, Red Lion Square, London WC1R 4QD.

"Warranties" means the Non-Tax Warranties and the Tax Warranties, and **"Warranty"** means any one of them

"Warranty Claim" means a claim by XKO against the Vendor for breach of any of the Warranties

"Working Capital Excess" shall mean any amount payable by XKO pursuant to clause 2.3 of Schedule 11.

"Working Capital Shortfall" shall mean any amounts payable by the Vendor to XKO pursuant to clauses 2.1 and/or 2.2 of Schedule 11

"Working Time Regulations" means the Working Time Regulations 1998 (SI No 1833)

"XKO Group" means XKO and any holding company or parent company or any subsidiary or subsidiary undertaking of XKO and **"XKO Group Company"** shall be construed accordingly

"XKO's Solicitors" means Osborne Clarke of Apex Plaza, Forbury Road, Reading, Berkshire RG1 1AX

"XKO Shares" means ordinary shares of 25p each in the capital of XKO.

1.2 In this Agreement, unless the context otherwise requires.

- (a) words defined in paragraph 1 of the Tax Schedule shall bear the same meaning in this Agreement
- (b) words in the singular include the plural and vice versa and words in one gender include any other gender;
- (c) a reference to a statute or statutory provision includes
 - (i) any subordinate legislation (as defined in section 21(1) of the Interpretation Act 1978) made under it,
 - (ii) any repealed statute or statutory provision which it re-enacts (with or without modification), and
 - (iii) any statute or statutory provision which modifies, consolidates, re-enacts or supersedes it except to the extent that it would create or increase the liability of any party under this Agreement;
- (d) a reference to
 - (i) any "**party**" means any party to this Agreement as set out at the head of page 1 (and "**parties**" means all of the parties to this Agreement) and includes its successors in title and permitted assigns,
 - (ii) a "**person**" includes any individual, firm, corporation, body corporate, association or partnership, trust, unincorporated organisation, employee representative body, government or state or agency or department thereof, executors administrators or successors in title (whether or not having a separate legal personality),
 - (iii) clauses and schedules are to clauses and schedules of this Agreement and references to sub-clauses and paragraphs are references to sub-clauses and paragraphs of the clause or schedule in which they appear,
 - (iv) any provision of this Agreement is to that provision as amended in accordance with the terms of this Agreement,
 - (v) any document being "**in the agreed form**" means in a form which has been agreed by the parties on or before the date of this Agreement and for identification purposes signed by them or on their behalf by their solicitors,
 - (vi) "**writing**" shall not, for the avoidance of doubt, include e-mail or any other form of electronic communication, other than facsimile.
- (e) terms defined in the Act have the meanings attributed to them by the Act,

- (f) where the Vendor has agreed to **"indemnify"** or **"keep indemnified"** or words to that effect in relation to a particular circumstance
 - (A) shall be an obligation by the Vendor as applicable to pay to XKO on a pound for pound basis a sum equal to all losses, claims, liabilities, damages and demands suffered and all costs and expenses (whether in each case they be actual or contingent) reasonably and properly incurred by XKO arising out of the circumstance; and
 - (B) shall include such additional amount as is necessary so as to ensure that the net receipt to XKO shall be free of any deduction in relation to Taxation
- (g) **"sterling"** and the sign **"£"** means pounds sterling in the currency of the United Kingdom,
- (h) the table of contents and headings are for convenience only and shall not affect the interpretation of this Agreement,
- (i) general words shall not be given a restrictive meaning:
 - (i) if they are introduced by the word **"other"** or **"including"** or similar words by reason of the fact that they are preceded by words indicating a particular class of act, matter or thing.
 - (ii) by reason of the fact that they are followed by particular examples intended to be embraced by those general words, and
- (j) where any statement is qualified by the expression **"so far as the Vendor is aware"** or **"to the best of the Vendor's knowledge and belief"** or any similar expression it shall be deemed to include an additional statement that it has been made after all reasonable enquiries of Mary Tinkler, Colin Hemming, Peter Robinson, James Kleiner-Mann and Russell Palmer and, for the avoidance of doubt, the Vendor shall not be required or expected to have made any enquiries of the Company's customers or clients

2 Conditions precedent

- 2.1 Except for the obligations set out in this clause 2, Schedule 7 (Pre-Completion Obligations), sub-clause 19.11 (Confidentiality), clause 20 (Announcements), clause 21 (Costs and expenses), clause 22 (Notices) and clause 23 (Governing law and jurisdiction) which shall be effective from the date of this Agreement notwithstanding this sub-clause 2.1, all other obligations of the parties under this Agreement are in all respects conditional upon:
 - (a) the Placing Agreement having become and remaining unconditional in all respects (save only in relation to any conditions relating to Escrow Completion and Admission) and the Placing Agreement not having been terminated in accordance with its terms,

- (b) Admission;
- (c) the passing of the Resolutions,
- (d) there not having occurred prior to Escrow Completion any Material Adverse Change or any material breach by the Vendor of obligations set out in Clause 8, and
- (e) the carrying out of the Financial Assistance Actions

2.2 Each of the parties shall (so far as it lies within their powers) use all reasonable endeavours to procure that the Conditions are satisfied as soon as possible and, in any event, not later than 7 September 2005 (or such later date as the parties may agree in writing)

2.3 XKO undertakes with the Vendor that it will as soon as reasonably practicable apply to the London Stock Exchange for Admission. The Vendor undertakes with XKO that he will use reasonable endeavours to procure that the Managers execute the Restrictive Covenant Agreement for delivery at Escrow Completion

2.4 If any of the Conditions are not satisfied by the date specified in sub-clause 2.2 then XKO shall be entitled at its option either to:

- (a) waive the Condition set out in 2.1(d) above, in which case following Completion XKO shall have no rights to bring any Claim in respect of the subject matter of the Material Adverse Change or the breach of clause 8 to the extent that XKO has been notified by the Vendor of any Material Adverse Claim and/or breach of clause 8 and to the extent that such notification adequately sets out the liability in respect of any Claim arising from such Material Adverse Change or breach of clause 8,
- (b) extend the period for satisfying the unsatisfied Condition to a date not less than 7 nor more than 21 days after that date, or
- (c) terminate this Agreement by notice in writing, in which event each party's further rights and obligations, except for those detailed in sub-clause 18.11 (Confidentiality) and clause 19 (Announcements) under this Agreement shall immediately terminate, and neither party shall have any rights whatsoever against the other (including, without limitation, any rights to make a Claim, or claim any loss caused by the termination or any rights for any party to pay any costs whatsoever of the other party) save that this Clause 2.4(c) shall not apply where a party is guilty of fraud, wilful non-disclosure or wilful concealment.

3 Sale and purchase

3.1 Subject to the terms and conditions of this Agreement, the Vendor shall sell and XKO shall purchase the Shares with effect from Completion.

- 3 2 The Shares shall be sold with the benefit of all rights attaching to or accruing to them as at Completion including all dividends and distributions declared, paid or made by the Company on or after Completion.
- 3 3 XKO shall not be obliged to complete the purchase unless the sale and purchase of all the Shares is completed simultaneously
- 3 4 The Vendor covenants at the date of this Agreement which shall be deemed to be repeated at Completion that:
- (a) the Shares set out opposite his name in the Schedule 1 are fully paid up (or credited as fully paid) and constitute the whole of the allotted and issued share capital of the Company;
 - (b) the Vendor is the sole legal and beneficial owner of such Shares and that he has the right to transfer such Shares on the terms of this Agreement and without the consent of any third party and that they are transferred free from any Encumbrance,
 - (c) there is no agreement or commitment outstanding under which the Company is or may be obliged to allot or issue any shares in the capital of the Company or under which any person is or may be entitled to the allotment, issue or transfer of any shares in the capital of the Company,
 - (d) he is not bankrupt, nor has he proposed a voluntary arrangement or made or proposed any arrangement or composition with his creditors or any class of his creditors,
- 3 5 None of the covenants set out in sub-clause 3 4 are subject to any qualification whatsoever and no letter, document or other communication shall be deemed to constitute a disclosure against these covenants and the Vendor hereby agrees to indemnify and keep indemnified XKO against any breach of such covenants.

Part 1 of the Law of Property (Miscellaneous Provisions) Act 1994 shall not apply to any disposition of the Shares made under or pursuant to this Agreement.

4 Initial Consideration

4 1 The Initial Consideration shall be satisfied by.

- (a) the payment of £15,981,829 80 payable in accordance with clauses 9 4(d);
- (b) the allotment and issue of the Initial Consideration Shares in accordance with clause 9 4(b)(1),
- (c) the allotment and issue to persons nominated by the Broker of the Placing Shares, and
- (d) the payment by XKO to the Vendor of any Working Capital Excess in accordance with Schedule 11

4.2 The Initial Consideration Shares to be issued to the Vendor hereunder and the Placing Shares shall, upon issue, rank pari passu in all respects with the existing XKO Shares save that they shall not rank for any dividend or other distribution declared, made or paid by reference to a record date prior to the date of issue

4.3 To the extent that any sums are due from the Vendor to XKO pursuant to Schedule 11, the Vendor will pay such sums as calculated by reference to the provisions of Schedule 11.

5 "A" Consideration

5.1 XKO shall procure that within 70 days of the end of the First Earn-out Period, a draft of the First Earn-out Accounts is prepared by or on behalf of the Vendor taking into account, the verification provided for by paragraphs 3(e) and 3(l) of Schedule 8, and an EBIT Certificate in respect of the First Earn-out Period is issued by Simmons Gainsford on behalf of the Vendor. A copy of the draft First Earn-out Accounts and the EBIT Certificate as approved by the Vendor shall be sent by the Vendor to XKO within 2 Business Days of finalisation

5.2 XKO shall notify the Vendor in writing within 20 Business Days of receipt of the First Earn-out Accounts and the EBIT Certificate whether or not XKO accepts them as drawn, and if no such notification in writing is made to the Vendor within the said period of 20 Business Days, they shall be deemed to be accepted

5.3 If notification in writing of non-acceptance is given by XKO, the parties (with their accountants if desired) shall seek within 30 days of the date of the notification, to agree any adjustment to the First Earn-out Accounts and the EBIT Certificate. If agreement cannot be reached within this period the parties shall within 7 days thereafter, jointly appoint an independent firm of accountants (in default of agreement to be appointed by the President for the time being of the Institute of Chartered Accountants in England and Wales) to determine the First Earn-out Accounts and the EBIT Certificate. Any firm so appointed shall act as expert and not as arbitrator, and its decision shall, save in the case of manifest error, be final and binding on the parties and its costs shall be met jointly by XKO and the Vendor unless otherwise determined by such firm.

5.4 If the EBIT for the First Earn-out Period ("Period 1 EBIT") is equal to or greater than £3,000,000 but less than or equal to £3,100,000 the A Consideration shall be an amount equal to X of nominal amount of Series "A" Guaranteed Loan Notes:

Where: $X = Y \times Z$

Y = the amount by which the Period 1 EBIT exceeds £3,000,000, and

Z = £30

5.5 If Period 1 EBIT is greater than £3,100,000 but less than or equal to £3,200,000, the First Earn-out Consideration will be an amount equal to

(a) £3,000,000 nominal amount of Series "A" Guaranteed Loan Notes, plus

- (b) an amount equal to A nominal amount of Series "A" Subordinated Loan Notes (up to a maximum of £3,000,000)

Where $A = B \times C$

and

$B = £30$, and

$C =$ the amount by which the Period 1 EBIT exceeds £3,100,000

- 5.6 If Period 1 EBIT is greater than £3,200,000 but less than or equal to £3,750,000 the First Earn-out Consideration will be

- (a) £3,000,000 nominal amount of Series "A" Guaranteed Loan Notes, and
(b) £3,000,000 nominal amount of Series "A" Subordinated Loan Notes, and
(c) XKO Shares having a value (calculated by reference to a price of £0.85 per XKO Share hereunder (a "Share Value") equal to the amount by which Period 1 EBIT exceeds £3,200,000 multiplied by 1.8182) up to a maximum number of 1,176,471 XKO Shares ("First Earn-out Shares").

- 5.7 If the Period 1 EBIT is greater than £3,750,000 but less than or equal to £4,750,000 then the First Earn-out Consideration shall be:

- (a) £3,000,000 nominal amount of Series "A" Guaranteed Loan Notes; and
(b) £3,000,000 nominal amount of Series "A" Subordinated Loan Notes;
(c) 1,176,471 XKO Shares ("First Earn-out Shares"); and
(d) an amount equal to D in nominal amount of Series "A" Subordinated Loan Notes (up to a maximum of £1,500,000)

Where: $D = E \times F$

and

$E = £1.50$, and

$F =$ the amount by which the Period 1 EBIT exceeds £3,750,000

- 5.8 If the Period 1 EBIT is greater than £4,750,000, the First Earn-out Consideration will be the same as set out in clause 5.7 (above).

- 5.9 On the First Earn-Out Payment Date:

- (a) XKO shall allot and issue, credited as fully paid, to the Vendor the First Earn-Out Shares, such shares ranking pari passu in all respects with the existing XKO Shares then in issue, save for any dividends or distributions made or paid

prior to the First Earn-Out Completion Date and shall deliver a share certificate in respect thereof and will procure that First Earn Out Shares are admitted to trading on AIM, and

- (b) XKO shall procure the issue of the Lloyds Guarantee and will issue to the Vendor the relevant nominal amount of Series "A" Guaranteed Loan Notes and Series "A" Subordinated Loan Notes.

6 "B" Consideration

- 6.1 XKO shall procure that within 70 days of the end of the Second Earn-out Period, a draft of the Second Earn-out Accounts is prepared by or on behalf of the Vendor, taking into account the verification process provided for by paragraphs 3(e) and 3(l) of Schedule 8, and an EBIT Certificate in respect of the Second Earn-out Period is issued by Simmons Gainsford on behalf of the Vendor. A copy of the draft Second Earn-out Accounts and the EBIT Certificate as approved by the Vendor shall be sent to XKO by the Vendor within 2 Business Days of finalisation.
- 6.2 XKO shall notify the Vendor in writing within 20 Business Days of receipt of the Second Earn-out Accounts and the EBIT Certificate whether or not XKO accepts them as drawn, and if no such notification in writing is made to the Vendor within the said period of 20 Business Days, they shall be deemed to be accepted.
- 6.3 If notification in writing of non-acceptance is given by XKO, the parties (with their accounts if desired) shall seek within 30 Business Days of the date of notification, to agree any adjustments to the Second Earn-out Accounts and the EBIT Certificate. If agreement cannot be reached within this period the parties shall, within 7 days thereafter, jointly appoint an independent firm of accountants (in default of agreement to be appointed by the President for the time being of the Institute of Chartered Accountants in England and Wales) to determine the Second Earn-out Accounts and the EBIT Certificate. Any firm so appointed shall act as expert and not as arbitrator, and its decision shall, save in the case of manifest error, be final and binding on the parties and its costs shall be met jointly by XKO and the Vendor unless otherwise determined by such firm.
- 6.4 If the EBIT in respect of the Second Earn-out Period ("Period 2 EBIT") is equal to or greater than £5,000,000 but less than or equal to £5,500,000 the "B" Consideration shall be a nominal amount equal to X of Series "B" Guaranteed Loan Notes

Where: $X = Y \times Z$

Y = the amount by which the Period 2 EBIT exceeds £5,000,000); and

Z = £4.

- 6.5 If Period 2 EBIT is greater than £5,500,000 but is less than or equal to £7,500,000, the Second Earn-out Consideration will be
 - (a) £2,000,000 nominal amount of Series "B" Guaranteed Loan Notes, plus

- (b) an additional nominal amount of Series "B" Guaranteed Loan Notes equal to A (up to a maximum of £1,000,000)

Where $A = B \times C$

and

$B = £0.5$; and

$C =$ the amount by which the Period 2 EBIT exceeds £5,500,000; plus

- (c) a nominal amount equal to D of Series "B" Subordinated Loan Notes (up to a maximum of £4,000,000 nominal of Series "B" Subordinated Loan Notes)

Where: $D = E \times F$

and

$E = £2$, and

$F =$ the amount by which the Period 2 EBIT exceeds £5,500,000.

- 6.6 If Period 2 EBIT is greater than £7,500,000 but is less than or equal to £8,500,000, the Second Earn-out Consideration will be

- (a) £3,000,000 nominal amount of Series "B" Guaranteed Loan Notes, plus
(b) £4,000,000 nominal amount of Series "B" Subordinated Loan Notes, plus
(c) XKO Shares having a value (calculated by reference to a price of £0.85 per XKO Share hereunder (a "Share Value") equal to the amount by which Period 2 EBIT exceeds £7,500,000 multiplied by 2) up to a maximum number of [2,352,942] XKO Shares ("Second Earn-out Shares")

- 6.7 If Period 2 EBIT is greater than £8,500,000 but is less than or equal to £10,500,000, the Second Earn-out Consideration will be

- (a) £3,000,000 nominal amount of Series "B" Guaranteed Loan Notes, plus
(b) £4,000,000 nominal amount of Series "B" Subordinated Loan Notes, plus
(c) 2,352,942 XKO Shares ("Second Earn-out Shares"), plus
(d) a nominal amount equal to G of Series "B" Subordinated Loan Notes (up to a maximum of £3,000,000 nominal amount)

Where: $G = H \times I$

and

$H = £1.5$, and

I = the amount by which the Period 2 EBIT exceeds £8,500,000.

6 8 If period 2 EBIT is greater than £10,500,000, the Second Earn-out Consideration will be the same as set out in clause 6 7 (above)

6.9 On the Second Earn-Out Payment Date.

(a) XKO shall allot and issue, credited as fully paid, to the Vendor the Second Earn-Out Shares, such shares ranking *pari passu* in all respects with the existing XKO Shares then in issue, save for any dividends or distributions made or paid prior to the Second Earn-Out Completion Date and shall deliver a share certificate in respect thereof and will procure that the Second Earn-Out Shares are admitted to trading on AIM; and

(b) XKO shall procure the issue of the Lloyds Guarantee and will issue to the Vendor the relevant nominal amount of Series "B" Guaranteed Loan Notes and Series "B" Subordinated Loan Notes

7 Conduct of business during the Earn-out Periods

7.1 Save for payments made by the Company to enable XKO to meet its obligations in respect of the Loan Notes (including any cash deposits required to secure the same), the Vendor and XKO will procure that, for as long as any of the restrictions in clause 7 3 shall apply, the Company will only make the Permitted Distributions to XKO and no other payments whatsoever shall be made by the Company to any company within the Post Sale Group. The parties agree that subject to there being Available Cash (as defined in the Subordinated Loan Note) and provided further that such Available Cash is available for distribution under the Act, the Company shall pay to XKO such dividends as or necessary so as to enable XKO to meet all its payment obligations in respect of the Loan Notes, and such dividends (or the levying of any management charges) will be made in priority to any drawdown by XKO under the Inter Company Loan Agreement in agreed form

7 2 The Vendor undertakes to XKO that for so long as any of the restrictions contained in clause 7 3 apply, (and provided that he continues to be a director/employee/consultant to the Company) he shall exercise all his powers as director/employee or consultant (unless otherwise agreed or directed by XKO) to ensure that the business of the Company shall be carried on in the ordinary and proper course and substantially in the same manner that such business has been carried on prior to the date of this Agreement. Without prejudice to the foregoing, the Vendor will not, without XKO's written consent

(a) acquire any material business or assets, or the share capital of any company;

(b) dispose of any part of the business assets or undertaking of the Company;

(c) make any substantial reduction in head-count of the Company's employees.

7 3 Subject to the further provisions of this clause 7, XKO undertakes with the Vendor that, until the Subordinated Loan Notes have been fully repaid by XKO, without the

Vendor's written consent

- (a) XKO will not exercise its rights as a shareholder in the Company in a manner which would impede the carrying on by the Company of its ordinary course of business;
- (b) XKO will, provided that the Vendor remains employed by the Company, reasonably permit the Vendor to have full authority and responsibility for conducting the ordinary course operations of the business of the Company;
- (c) XKO will not dispose of all or any part of the share capital of the Company or any interest therein nor sell, transfer or otherwise dispose of the whole or any part of any business, undertaking or assets of the Company whether by a single transaction or by a series of related transactions, or cease carrying on any part of the business of the Company;
- (d) XKO shall not pass or procure the passing of any resolution for the winding-up or petition for the winding-up or administration of the Company or appoint or procure the appointment of a liquidator, receiver, administrative receiver or administrator over any of the assets of the Company;
- (e) the Shares of the Company shall not be admitted to trading on any recognised stock exchange (which for this purpose shall include AIM and OFEX) unless mutually agreed to XKO and the Vendor,
- (f) both XKO and the Vendor agree to maintain and operate the client accounts of the Company in accordance with policies and practices of the Company as at Completion
- (g) XKO agrees that all dealings, intergroup transactions, services and matters relating to the operation of the Company will be conducted on a basis within XKO's Group which are on terms no less favourable to the business of the Company (but always on arms length terms) and the conduct of operations in relation to the other companies in XKO's Group. The principle of fair conduct and treatment shall extend to all operational and financial matters including the ability of the Vendor to achieve the A Consideration and the B Consideration, and XKO will not do anything to require the Company or the Vendor to do anything which would undermine or frustrate the Vendor's ability to achieve the A Consideration and the B Consideration;
- (h) unless the Vendor has been properly dismissed in accordance with the Service Agreement, no material departure shall be made from the business and strategy of the Company as at Completion without the consent of the Vendor,
- (i) provided that the Vendor remains employed by the Company, any appointments to executive roles in the Company will require the prior approval of the Vendor in the first twelve months following Completion and in that period the Vendor shall remain as the Managing Director of the Company,

- (j) provided that the Vendor remains employed by the Company, the directors of the Company shall comprise of (a) the Vendor and (b) two persons nominated by XKO. This provision shall not entitle the Board of the Company to override, breach or derogate from any of the other provisions of this clause 7;
- (k) the Company shall not enter into liquidation or receivership or cease business other than by reason of an insolvency arising solely through the unprofitability of its trading activities, conducted in accordance with this clause 7,
- (l) there will be no change to the IT Systems other than changes in ordinary course of business,
- (m) the aggregate capital expenditure of the Company incurred in any financial year until the end of the Second Earn-out Period shall not exceed that set out in the Budget without the approval of the Vendor,
- (n) no change shall be made to the accounting reference date from 31st March or accounting policies of the Company,
- (o) no new branch, agency or trading establishment or subsidiary of the Company shall be established and no branch, agency or trading establishment of the Company shall be closed;
- (p) XKO will procure so far as it is able that neither the Company nor its appointed directors take action so as to terminate the Service Agreement save in the circumstances set out in clause 12 of the Service Agreement,
- (q) no new employee or consultant shall be appointed by the Company and no variation to the terms and conditions of any existing employee or consultant of the Company shall be effected
- (r) XKO will ensure that the Company does not make any payment by way of loan, distribution or management charge to XKO (save for the Permitted Distributions) unless such payment is either (i) for the express purpose of enabling XKO to repay any sums due to the Vendor or (ii) formally demanded of the Company in writing by the Bank

7.4 Notwithstanding the provisions of clause 7.3, clauses 7.3(b), (l), (n) (o) (p), and (q) shall cease to apply from the end of the Second Earn-Out Period

7.5 Subject to clause 7.6, XKO undertakes with the Vendor that XKO shall procure that prior to the end of the Second Earn Out Period the Company shall not take or enter into or make or permit the taking or making of or entering into of any action, omission or transaction which would cause

- (a) XKO to cease to be the sole direct legal and beneficial owner of the entire issued share capital of the Company,

- (b) other than in the event of the Company ceasing to be a trading company for reason of insolvency, the Post Sale Accrual Group to cease to be a trading group, and
- (c) other than in the event of insolvency, the Company to cease to be a trading company.

7 6 XKO shall not have any obligation under clause 7.3, 7 4 and 7 5 if the Company is in liquidation, administration, administrative receivership or if a receiver has been appointed over any of its assets or it becomes unable to pay its debts under section 123 of the Insolvency Act 1986 (and so that any term in this clause 7 shall be interpreted in accordance with the definition ascribed to such term in the Insolvency Act 1986) (in each case "an Insolvency Event") or to the extent that such action is specifically required by the Bank as an alternative to the taking by the Bank of any action which would give rise to an Insolvency Event relating to the Company

7 7 In the event that EBIT for the First Earn-out Period is less than £1,500,000, or the EBIT for the 6 months to September 2006 is less than £1,000,000, or EBIT for the 12 months to March 2007 is less than £2,500,000, with effect from the same being reasonably determined the provisions of clause 7 3 and clause 7 5 shall cease to apply For these purposes where any such matter is agreed between the parties, or in the absence of agreement where the same is determined by an independent accountant (appointed in the same manner as is set out in clause 5 3) such determination shall be deemed to be reasonable.

7 8 The foregoing provisions of clauses 7 3, 7 4 and 7 5 shall remain subject to XKO complying with its continuing obligations under the AIM Rules

8 Pre-completion obligations

The Vendors shall procure that, between the date of this Agreement and the earlier of (1) Completion and (2) the termination of this Agreement for whatever reason, the Company shall carry on business in the normal and ordinary course and the Vendor will procure that (save with the prior written consent of XKO (not to be unreasonably withheld or delayed) the matters set out in Schedule 7 are complied with

9 Exchange and Escrow Completion

9 1 On the signing of this Agreement, the Vendor shall deliver and shall procure the delivery to XKO of

- (a) the Disclosure Letter,
- (b) agreed form copies of:
 - (i) the Service Contract, and
 - (ii) the Consultancy Agreement

and XKO shall countersign and deliver the Disclosure Letter to the Vendor

- 9.2 Escrow Completion shall take place at the offices of XKO's Solicitors immediately after the passing of the Resolution(s) (or on such other date, time and place as the parties may agree but, in any event, no later than 7 September 2005)
- 9.3 At Escrow Completion the Vendor shall perform his obligations under this Agreement and shall deliver to XKO each of the documents as set out in Part 1 of Schedule 6 on the terms of the Escrow Letter
- 9.4 When the Vendor has complied with his obligations set out in sub-clause 9.3, XKO shall
- (a) deliver to the Vendor's Solicitors.
 - (i) a certified copy of the executed Placing Agreement,
 - (ii) a certified copy of the Resolution, and
 - (iii) a counterpart of the Escrow Letter duly signed by XKO;
 - (iv) duly executed Guaranteed Loan Note Instrument,
 - (v) duly executed Subordinated Loan Note Instrument;
 - (vi) duly executed Orderly Market Agreement;
 - (vii) those duly executed Restrictive Covenant Agreements which the Vendor has been able to obtain,
 - (viii) duly executed Second Charge,
 - (b) subject only to Admission
 - (i) procure the allotment and issue of the Initial Consideration Shares credited as fully paid to the Vendor and instruct XKO's registrars to enter the name of the Vendor in XKO's register of members and to deliver to the Vendor a share certificate in respect thereof; and
 - (ii) procure the allotment and issue of the Placing Shares credited as fully paid to such persons as the Broker shall nominate pursuant to the terms of the Placing Agreement,
 - (c) on or before the second Business Day following Admission pay or procure that the Broker pays the amount of £6,018,170.20 to the Vendor by telegraphic transfer to the client account of the Vendor's Solicitors at NatWest Bank plc, account number 36933112, sort code 603004. The Vendor hereby irrevocably authorises the Vendor's Solicitors to receive all sums due to him under this Agreement, and

- (d) on the date of Admission, pay the amount of £15,981,829 80 to the Vendor at the account specified in sub-clause 9 3(d) above

9.5 Subject to compliance by the Vendor and XKO with their respective obligations under 9 3 and 9 4(a) and (b) above, the Vendor, XKO and the Company will take the Financial Assistance Actions as set out in Part 2 of Schedule 6.

9.6 ***Compliance with Escrow Completion requirements***

If any of the requirements of sub-clauses 9 3, 9 4 or 9 5 are not complied with on the date set for Escrow Completion under sub-clause 9 2 or in accordance with sub-clauses 9 4(c) and 9 4(d), XKO (in the case of the requirements of sub-clauses 9 3) or the Vendor (in the case of the requirements of sub-clause 9 4) may

- (a) defer Escrow Completion with respect to some or all of the Shares to a date not less than 7 nor more than 28 days after that date (in which case the provisions of this sub-clause shall also apply to Completion as so deferred), or
- (b) proceed to Escrow Completion so far as practicable (including, at XKO's or, as the case may be, the Vendor's option, completion of the purchase of some only of the Shares) but without prejudice to any other rights which it or they may have under this Agreement, or
- (c) terminate this Agreement by notice in writing, in which event no party to this Agreement shall have any liability to any other party.

9 7 ***Completion***

Completion shall be deemed to occur upon Admission.

9 8 Each party to this Agreement undertakes to indemnify the other against any loss, expense or damage which they may suffer as a result of any document delivered to it under this clause being unauthorised or invalid

10 ***Release of Guarantees***

XKO shall use all reasonable endeavours on or after Completion (short of actual payment of any monies or the substitution of the guarantee of any person other than XKO or XKO Group Company) to procure the release from Completion of the Vendor from any Guarantee given by him for the benefit of the Company (subject to such Guarantees being Disclosed) forthwith upon being notified of its existence or otherwise becoming aware of it and shall indemnify the Vendor against all liability arising after Completion in respect of it.

11 ***Post completion matters***

11 1 The Vendor declares that for as long as he remains the registered holder of the Shares after Completion he will

- (a) hold the Shares and the dividends and any other moneys paid or distributed in respect of them after Completion and all rights arising out of or in connection

with them in trust for XKO,

- (b) deal with the Shares and all such dividends, distributions and rights as XKO may direct for the period between Completion and the day on which XKO or its nominee is entered in the register of members of the Company as the holder of the Shares

11.2 The Vendor irrevocably appoints XKO as his attorney for the purpose of exercising any rights, privileges or duties attaching to the Shares including receiving notices of and attending and voting at all meetings of the members of the Company from Completion to the day on which XKO or its nominee is entered in the register of members of the Company as the holder of the Shares

11.3 For the purpose of sub-clause 11.2, the Vendor authorises

- (a) the Company to send any notices in respect of their shareholdings to XKO;
- (b) XKO to complete and return forms of proxy, consents to short notice, written resolutions and any other document required to be signed by XKO as a member of the Company

11.4 If XKO Software Limited (or its assets) is/are sold and/or if XKO Network Systems (or its assets) is/are sold for a net amount (after costs of sale) which in aggregate exceeds the sum of £12,000,000 (such excess being the "**Bank Indebtedness Excess**") then

- (a) prior to the date of issue of the Series B Subordinated Loan Notes the Company will use its reasonable commercial endeavours to obtain any bank consents as might be necessary, and subject to any such necessary consents being obtained, the amount (in nominal value) of Subordinated Loan Notes to be issued to the Vendor shall, in respect of any payment of "A" Consideration or "B" Consideration, be reduced by an amount equal to 50% of the Bank Indebtedness Excess and the amount (in nominal value) of Guaranteed Loan Notes to be issued to the Vendor in respect of any subsequent payment of "A" Consideration or "B" Consideration shall be increased by a corresponding amount until such time as the amount equal to 50% of the Bank Indebtedness Excess has been fully utilised in such increase, and
- (b) after the date of the issue of the Series B Subordinated Loan Notes, the amount equal to 50% of the Bank Indebtedness Excess shall, subject to the obtaining of any necessary bank consents in the manner set out at (a) above, be used to repay the Subordinated Loan Notes then outstanding. The provisions of clauses 5 and 6 shall be deemed to be adjusted so as to give effect to this clause

11.5 For the avoidance of doubt, if a Permitted Distribution is not paid to XKO during the relevant financial period, then such amount shall be back dated and paid in addition to any future Permitted Distribution to the extent that it is permitted by the Act and/or the Company's articles of association, as if such payment were a Permitted Distribution in the year or period in which it is made

11.6 Upon the written request of XKO, the Vendor shall enter into the Consultancy Agreement on the expiry of the Service Contract

11.7 Without the consent in writing of the Vendor, XKO will procure that, prior to the end of the Second Earn Out Period, neither XKO nor any member of the XKO Group shall enter into a Material Capital Acquisition. For the purposes of this clause, "Material Capital Acquisition" shall mean any acquisition of shares or assets where the EBITDA attributable to the company or assets being acquired exceeds (either on a cumulative basis or individually) £3,000,000 (in respect of any Material Capital Acquisition completed prior to 31 March 2006) and £ 4,000,000 (less the EBITDA attributable to any such acquisition of any shares or assets in the period from Completion to 31 March 2006)

11.8

- (a) The Vendor hereby undertakes to XKO that it shall pay to the Company prior to the relevant due date all monies which the Company is liable to pay as agent to the Managers pursuant to the Restrictive Covenant Agreements other than the payment due to the Managers within 14 days following Completion which shall be paid by the Company (the "Management Bonuses")
- (b) The Vendor shall pay the Management Bonuses to the Company gross (together with an amount equal to any employer's national insurance contributions to which the Company is or may become liable) and XKO undertakes to the Vendor that the Company shall pay to the Managers the Management Bonuses net of Tax (as agent of the Vendor)
- (c) XKO further undertakes and confirms to the Vendor that the Company (as agent for the Vendor) shall account and pay to the appropriate Tax Authority (as defined in Schedule 5) for all Tax payable in respect of the Management Bonuses.

12 Warranties

12.1 The Vendor warrants to XKO that each of the Warranties is true and accurate at the date of this Agreement on the basis that the Warranties are deemed to be repeated at Completion by reference to the circumstances applying at that time

12.2 Each of the Warranties is a separate and independent Warranty and shall not be limited by reference to any other Warranty or anything in this Agreement (save to the extent expressly provided to the contrary in Schedule 4 or paragraph 6 of the Tax Schedule)

12.3 XKO warrants to the Vendor that, at the date of this Agreement, it is not actually aware of any Material Claim which it would be entitled to bring following Completion (and for these purposes XKO shall be deemed to have actual knowledge only in relation to matters of which William Good and Simon Beart and Clive Musgrave have actual knowledge (and actual knowledge shall not, for the avoidance of doubt, be imputed by any of the professional advisors of XKO or any other employee of the XKO GroupXKO).

12 4 The Warranties are given subject to the matters Disclosed in the Disclosure Letter

13. Tax Covenant

The Vendor covenants to XKO in the terms of the Tax Covenant as set out in the Tax Schedule.

14 XKO's remedies

14 1 The Vendor shall disclose in writing to XKO anything which is a Claim as soon as reasonably practicable following it coming to his notice before Completion

14 2 Save as set out in clauses 2.4(a) and 12 4, the rights and remedies of XKO in respect of any breach of the Warranties or the Indemnities or the Tax Covenant shall not be affected by Completion or by any investigation made, or which could have been made, by it or on its behalf into the affairs of the Company.

14 3 If any Claim is made, the Vendor shall not make any claim against the Company or any director or employee of the Company on whom he may have relied before agreeing to any terms of this Agreement or authorising any statement in the Disclosure Letter other than an action against a director or employee of the Company in the case of fraud, wilful non-disclosure or concealment

15 Limitations on liability

The liability of the Vendor in respect of any Claim as provided shall be limited as provided in Schedule 4 but provided always that notwithstanding any other provision in this Agreement, the provisions of this clause 15 and Schedule 4 and Part 4 of the Tax Schedule shall not apply to any Claim made against the Vendor in the case of any fraud or dishonesty or any wilful concealment on the part of the Vendor

16. Indemnities

16 1 The Vendor covenants at the date of this Agreement and again at Completion that.

(a) Save for having its name mistakenly inserted in a contract with British Gas Trading Limited (where such purported contract is unenforceable against UBML, UBML has never traded and is not a party to any contract, and

(b) UBML has no assets or liabilities (present or contingent), and

(c) so far as the Vendor is aware, there is nothing which might prevent UBML from being wound up or struck off the Register of Companies maintained by the Registrar of Companies

16 2 None of the covenants set out above are subject to any qualification and the Vendor hereby agrees to indemnify and keep XKO indemnified against any breach of such covenants

16 3 The Vendor hereby agrees to indemnify and keep XKO indemnified against any and all losses, damages (including any damages or compensation paid by XKO and/or the

Company to compromise or settle any claim), costs, expenses, proceedings or claims which the Company suffers or incurs (in any case to the extent that same is not recovered under a right of action against any third party) which (i) arises out of or is the result of any person owning or claiming to own any proprietary or other rights in all or any part of the software applications used by the Company, known as SMARTI, MARTIAN and ERIC, or (ii) which arises as a result of any person alleging that the Company's use of such software applications infringes the rights (including the rights relating to Intellectual Property) of any such third party, together with all costs incurred by the Company in contesting any such action as may be brought or threatened in respect of the matters set out in (i) and (ii) above.

16.4 The Vendor shall forthwith indemnify the Purchaser in respect of any loss, damage, cost or claim incurred by the Company in respect of (i) any liability which may arise under the PAYE System (including under sections 682-712 Income Tax (Earnings or Pensions) Act 2003 or on regulations made under those sections) (ii) any liability for Class 1, or Class 1A National Insurance Contributions and (iii) any liability for paid annual leave under the Working Time Regulations 1998 in each case which may arise in connection with the engagement or employment of Martin Mapp, Colin Hemming, Kevin O'Connor and/or Alec Russell, or any of the field agents who provide or have provided services to the Company, together in each case with any interest and penalties which may be incurred in connection with such liability. The conduct of all matters in relation to any claim under this clause 16.4 shall be governed as if the provisions of paragraph 9 of Schedule 5 applied hereto.

16.5 The Vendor shall forthwith indemnify the Purchase in respect of any loss, damage, cost or claim incurred by the Company in respect of any claim for breach of contract by Andy May for failure by the Company to put in place employee incentive schemes in which Andy May could participate during his employment.

17. Protection of Goodwill

17.1 In order to assure to XKO the full benefit of the business and goodwill of the Company, the Vendor undertakes that (save as may be bona fide in fulfilling his duties as an employee of the Company or a XKO Group Company thereafter) he shall not directly or indirectly (whether as principal, shareholder, partner, employees, agent or otherwise), whether on his own account or in conjunction with or on behalf of any other person, do any of the following things

- (a) during the Restricted Period carry on or be engaged, concerned or interested in (except as the holder of shares in a company whose shares are listed on a recognised investment exchange or overseas investment exchange (as such terms are defined in sections 285 and 313 of the Financial Services and Markets Act 2000) which confer not more than three per cent of the votes which could normally be cast at a general meeting of that company) any business which competes with any part of the Restricted Business within the Territory, or
- (b) during the Restricted Period canvass or solicit or seek to entice away the custom of any Client or Prospective Client for the purposes of providing

Restricted Business within the Territory; or

- (c) during the Restricted Period accept orders for the provision of Restricted Business within the Territory in respect of any Client or Prospective Client, or
- (d) during the Restricted Period endeavour to entice away from the Company or encourage to terminate his employment with the Company (whether or not such termination would be a breach of his contract of employment) any Senior Employee; or
- (e) during the Restricted Period employ or otherwise engage any Senior Employee; or
- (f) save in the circumstances referred to in sub-clause 18 11(b) (Confidentiality), disclose to any other person any information which is secret or confidential to the business or affairs of the Company or any XKO Group Company or use any such information to the detriment of the business of the Company or any XKO Group Company for so long as that information remains secret or confidential,
- (g) in relation to a business which is competitive or reasonably likely to be competitive with the Restricted Business, use any trade or business name or distinctive mark, style or logo used by or in the business of the Company or anything intended or likely to be confused with it

17.2 Each undertaking contained in this clause 17 shall be construed as a separate and independent undertaking and while the restrictions set out in this clause are considered by the parties to be reasonable in all the circumstances it is agreed that if any one or more of such restrictions shall either be taken by itself or themselves together be adjudged to go beyond what is reasonable in all the circumstances for the protection of XKO's legitimate interests but would be adjudged reasonable if any particular restriction or restrictions were deleted or in any part or parts of the wording thereof were deleted, restricted or limited in any particular manner (including without limitation any reduction in their duration or geographical scope) then the said restrictions shall apply with such deletions, restrictions or limitation as the case may be.

17.3 The Vendor agrees that, having regard to the facts and matters set out above and having taken professional advice, the restrictions contained in this clause 18 are reasonable and necessary for the protection of the legitimate business interests of XKO

XKO

18. General

18.1 Entire Agreement

- (a) This Agreement and all of the documents in the agreed form sets out the entire agreement and understanding between the parties and supersedes all prior agreements, understandings or arrangements (oral or written) in respect of the

subject matter of this Agreement

- (b) The Vendor shall have no liability in respect of any other representation, warranty or promise made prior to the date of this Agreement unless it was made fraudulently.

18.2 *Contracts (Rights of Third Parties) Act 1999*

Unless expressly provided in this Agreement, no term of this Agreement is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it

18.3 *Assignment*

This Agreement shall be binding upon and enure for the benefit of the successors in title of the parties but, except as set out in sub-clause (b), shall not be assignable by any party without the prior written consent of the other, save that XKO may assign the benefit of this Agreement (including, without limitation, the Warranties) to any XKO Group Company (provided that any transferee shall remain a XKO Group Company) and any bank of XKO where such assignment is by way of general security given to such bank by any XKO Group Company but XKO shall remain primarily liable to the Vendor for the obligations hereunder, subject in the case of the obligations under the Guaranteed Loan Notes and the Subordinated Loan Notes, to the terms of such Loan Notes

18.4 *Variation*

No purported variation of this Agreement shall be effective unless it is in writing and signed by or on behalf of each of the parties.

18.5 *Effect of Completion*

Except to the extent already performed, all the provisions of this Agreement shall, so far as they are capable of being performed or observed, continue in full force and effect notwithstanding Completion

18.6 *Invalidity*

If any part of this Agreement is found by any court or competent authority to be invalid, unlawful or unenforceable in any jurisdiction, then that provision shall be deemed not to be a part of this Agreement, and it shall not affect the enforceability of the remainder of this Agreement nor shall it affect the validity, lawfulness or enforceability of that provision in any other jurisdiction.

18.7 *Releases and waivers*

- (a) The rights, powers and remedies conferred on any party by this Agreement and remedies available to any party are cumulative and are additional to any right, power or remedy which it may have under general law or otherwise
- (b) Any party may, in whole or in part, release, compound, compromise, waive or

postpone, in its absolute discretion, any liability owed to it or right granted to it in this Agreement by any other party or parties without in any way prejudicing or affecting its rights in respect of that or any other liability or right not so released, compounded, compromised, waived or postponed

- (c) No single or partial exercise, or failure or delay in exercising any right, power or remedy by any party shall constitute a waiver by that party of, or impair or preclude any further exercise of, that or any right, power or remedy arising under this Agreement or otherwise

18.8 Further assurance

After Completion, the Vendor shall execute such documents and take such steps as XKO may reasonably require to vest the full title to the Shares in XKO

18.9 Counterparts

- (a) This Agreement may be executed in any number of counterparts and by the parties on separate counterparts, but shall not be effective until each party has executed at least one counterpart
- (b) Each counterpart, when executed, shall be an original of this Agreement and all counterparts shall together constitute one instrument

18.10 Time of the essence

Time is of the essence as regards any obligation of any party under this Agreement to make any payment to the other party (including the issue of any [shares or loan notes]), but shall not otherwise be of the essence

18.11 Confidentiality

- (a) Except as referred to in sub-clause (b), the Vendor shall treat as strictly confidential all information received or obtained as a result of entering into or performing this Agreement which relates to the provisions or subject matter of this Agreement, to any other party to this Agreement to or the negotiations relating to this Agreement.
- (b) Any party may disclose information which would otherwise be confidential if and to the extent
 - (i) it is required to do so by law or any securities exchange or regulatory or governmental body to which it is subject wherever situated,
 - (ii) it considers it necessary to disclose the information to its professional advisers, auditors and bankers provided that it does so on a confidential basis,
 - (iii) the information has come into the public domain through no fault of that party, or

- (iv) each party to whom it relates has given its consent in writing

18 12 *Default Interest*

If any party defaults in the payment when due of any sum payable under this Agreement (whether payable by agreement or by an order of a court or otherwise), the liability of that party shall be increased to include interest on that sum from the date when such payment was due until the date of actual payment at a rate per annum of 4 per cent above the base rate from time to time of National Westminster Bank PLC. Such interest shall accrue from day to day and shall be compounded monthly

18 13 *Set-off*

- (a) If at any time prior to the due date for the payment of any part of the A Consideration or the B Consideration (the "**Relevant Date**"), either

- (i) XKO and Vendor agree in writing the amount of any Claim brought by XKO against the Vendor pursuant to this Agreement, or
- (ii) there is a judgment in respect of any such Claim which involves a payment to XKO from a court of competent jurisdiction (and from which either no appeal lies or following such judgment the Vendor or XKO do not, within the applicable time limit, give notice of an appeal),

(an "**Agreed Claim**"),

then (i) XKO shall (subject to the limitations and protections imposed by Schedule 4) deduct the Agreed Claim from the A Consideration or the B Consideration (as the case may be) in the following order:

- (i) the Series "A" Subordinated Loan Notes,
- (ii) the Series "A" Guaranteed Loan Notes,
- (iii) by issuing fewer First Earn-Out Shares (calculated by reference to the mid-market value of such First Earn-Out Shares at the close of business on the day preceeding the date of set-off),
- (iv) the Series "B" Subordinated Loan Notes,
- (v) the "B" Guaranteed Loan Notes,
- (vi) by issuing fewer Second Earn-Out Shares (calculated by reference to the mid-market value of such Second Earn-Out Shares at the close of business on the day preceeding the date of set-off),

and the amount of the "A" Consideration or the "B" Consideration (as the case may be) payable to the Vendor shall be reduced by the amount of such Agreed Claim

19 **Announcements**

- 19.1 Except as referred to in sub-clause 19.2, no announcement concerning the terms of this Agreement shall be made by or on behalf of any of the parties without the prior written consent of the others, such consent not to be unreasonably withheld or delayed
- 19.2 Any announcement or circular required to be made or issued by any party by law or under the regulations of the UK Listing Authority, the London Stock Exchange or the City Code on Takeovers and Mergers issued by the Panel on Takeovers and Mergers may be made or issued by that party without consent if it has first sought consent and given the other parties a reasonable opportunity to comment on the subject matter and form of the announcement or circular (given the time scale within which it is required to be released or despatched).
- 20 Costs and expenses**
- 20.1 Except as otherwise expressly provided, each party shall bear its own costs and expenses incurred in the preparation, execution and implementation of this Agreement.
- 20.2 XKO shall pay all stamp and other transfer duties and registration fees applicable to any document to which it is a party and which arise as a result of or in consequence of this Agreement.
- 21 Notices**
- 21.1 Any notice to a party under this Agreement shall be in writing signed by or on behalf of the party giving it and shall, unless delivered to a party personally, be left at, or sent by prepaid first class post, prepaid recorded delivery or facsimile to the address of the party as set out on page 1 or in Schedule 1 of this Agreement or as otherwise notified in writing from time to time.
- 21.2 Except as referred to in sub-clauses 21.3 and 21.4, a notice shall be deemed to have been served
- (a) at the time of delivery if delivered personally;
 - (b) 48 hours after posting in the case of an address in the United Kingdom and 96 hours after posting for any other address,
 - (c) 2 hours after transmission if served by facsimile on a Business Day prior to 3pm or in any other case at 10 am on the Business Day after the date of despatch
- 21.3 If the deemed time of service is not during normal business hours in the country of receipt, the notice shall be deemed served at or, in the case of faxes, two hours after the opening of business on the next Business Day of that country
- 21.4 The deemed service provisions set out in sub-clause 21.2 shall not apply to
- (a) a notice served by post, if there is a national or local suspension, curtailment or disruption of postal services which affects the collection of the notice or is such that the notice cannot reasonably be expected to be delivered within 48

hours or 96 hours (as appropriate) after posting, and

- (b) a notice served by facsimile, if, before the time at which the notice would otherwise be deemed to have been served, the receiving party informs the sending party that the notice has been received in a form which is unclear in any material respect, and, if it informs the sending party by telephone, it also despatches a confirmatory facsimile within two hours

21.5 In proving service it will be sufficient to prove

- (a) in the case of personal service, that it was handed to the party or delivered to or left in an appropriate place for receipt of letters at its address,
- (b) in the case of a letter sent by post, that the letter was properly addressed, stamped and posted,
- (c) in the case of facsimile, that it was properly addressed and despatched to the number of the party

21.6 A party shall not attempt to prevent or delay the service on it of a notice connected with this Agreement

22 Governing law and jurisdiction

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

22.2 Each of the parties irrevocably submits for all purposes in connection with this Agreement to the exclusive jurisdiction of the courts of England

In witness whereof the parties or their duly authorised representatives have executed this Agreement as a deed and delivered it at the date first appearing at the head of this Agreement

Schedule 1
(The Vendor)

Name	Address	No. of Ordinary Shares of £1 each
Robin Alvarez	9 The Grove Highgate London N6 6JU	100
Total		<hr/> 100 <hr/>

Schedule 2 – Part 1

(the Company)

The Company

Company Name	UBM Limited
Registered number	03618259
Date of incorporation	19 August 1998
Place of incorporation	England
Address of registered office	5th Floor, 7-10 Chandos Street, London W1G 9DQ
Authorised share capital	£100 divided into 100 ordinary shares of £1 each
Issued share capital	£100 divided into 100 ordinary shares of £1 each
Charges	No outstanding changes registered
Directors	Robin Alvarez - 9 The Grove, Highgate, London N6 6JU Mary Tinkler - 49 Barmouth Avenue, Perivale, Middlesex UB6 8JT Jonathan Bloch – 20 Woodland Rise, London N10 3UG Peter Robinson – 20 Woodcote close, Epsom, Surrey KT18 7QJ Alastair Taylor – Oakhurst, 31 Upper Hollis, Great Missenden, Bucks HP16 9HP
Secretary	Mary Tinkler - 49 Barmouth Avenue, Perivale, Middlesex UB6 8JT
Accounting reference date	30 June
Auditors	Simmons Gainsford
Tax residence	United Kingdom

Schedule 2 – Part 2

(the Property)

Leasehold property

Address	Date and Parties	Term	Authorised User	Current Rental	Rent Reviews
First floor premises, Hertsmere House, Shenley Road, Borehamwood	21.10 2004 (1) Abbey National Plc (2) Utility Billing and Metering Limited	From 20.9 2004 to 20 3 2014	Class A2 (a) and (b) or B1(a) of the Town and Country Planning (Use Classes) Order 1987	£65,000 (exclusive) per annum reduced to £13,867 40 (exclusive) per annum up to 19 September 2005 and £46,367 40 (exclusive) per annum for the period 20 September 2005 to 19 September 2006	25 3 2009

Schedule 3

(Non-Tax Warranties)

[[These are subject to further review upon completion of the legal due diligence exercise]]

The Vendors

1 *Arrangements with Vendor Associates*

Save in relation to employment contracts in relation to the Vendor which have been Disclosed, there are no contracts, arrangements or liabilities, actual or contingent, outstanding or remaining in whole or in part to be performed between the Company or any Vendor Associate

2 *Other interests of any Vendor Associate*

The Vendor does not have nor does he currently intend to acquire any interest, direct or indirect, in any business which has a close trading relationship with or which competes with the business now carried on by the Company at the date of this Agreement and, so far as the Vendor is aware, no Vendor Associate has such a business

Share capital

3. *Company*

3 1 None of the Shares was, or represents assets which were, the subject of a transfer at an undervalue, within the meaning of sections 238 or 339 of the Insolvency Act 1986, within the past 5 years

3 2 The Company has not at any time

- (a) reduced its share capital,
- (b) redeemed any share capital,
- (c) purchased any of its shares, or
- (d) forfeited any of its shares

4. *Subsidiaries*

4 1 The Company does not have, nor has it agreed to other than the acquisition of UBML acquire, any interest in any undertaking or in the share capital of any body corporate.

4 2 The Company does not hold nor is it liable on any share or relevant security which is not fully paid up or which carries any liability.

4 3 The Company does not reside, operate or have any branch, agency, place of business or establishment outside England & Wales

Corporate matters

5 *Insolvency of the Company*

- 5.1 No order has been made, no resolution has been passed, and so far as the Vendor is aware no petition presented, no meeting convened for the winding up of the Company or for a provisional liquidator to be appointed in respect of the Company and so far as the Vendor is aware the Company has not been a party to any transaction which could be avoided in a winding up.
- 5.2 No administration order has been made and no petition for one has been presented in respect of the Company
- 5.3 No administrator, receiver or administrative receiver has been appointed in respect of the Company or any of its assets. So far as the Vendor is aware, no application for the appointment of an administrator has been made in accordance with the out of court procedure under the Enterprise Act 2002
- 5.4 The Company is not insolvent, has not failed nor is unable to pay any of its debts as they fall due, within the meaning of section 123 of the Insolvency Act 1986
- 5.5 No voluntary arrangement has been proposed under section 1 of the Insolvency Act 1986 in respect of the Company and the Company has not made or proposed any arrangement or composition with its creditors or any class of them
- 5.6 No distress, execution or other process has been levied on the Company's assets and as far as the Vendor is aware, no action has been taken to repossess goods in the possession of the Company.
- 5.7 No unsatisfied judgment is outstanding against the Company and no demand has been served on the Company under section 123(1)(a) of the Insolvency Act 1986

6. *Statutory books and documents filed*

- 6.1 The statutory books, including all registers and minute books of the Company have in all material respects been properly kept and are up to date and contain an accurate record of the matters with which those books should deal
- 6.2 All documents which should have been delivered by the Company to the Registrar of Companies in England and Wales have been properly so delivered.
- 6.3 Since the Accounts Date the members of the Company in general meeting, or of any class of them, have not passed any resolution other than resolutions relating to the ordinary business of annual general meetings

Information

7. *Accuracy and adequacy of information*

- 7.1 The information contained in Schedules 1 and 2 is true and accurate

Accounts

8 *Preparation and contents of the Accounts*

8.1 The Accounts

- (a) have been prepared in accordance with the requirements of all relevant statutes and generally accepted United Kingdom accounting practices including, without limitation, all applicable Financial Reporting Standards issued by the Accounting Standards Board, Statements of Standard Accounting Practice issued by the Institute of Chartered Accountants of England and Wales and Statements from the Urgent Issues Task Force current at the Accounts Date and, where the accounting practice used to prepare the Accounts differs from that applied in the financial year ended 30 June 2004, the effect of any such difference is Disclosed in the Disclosure Letter,
- (b) have been audited by a statutory or certified auditor (as applicable) who has rendered an auditor's certificate without qualification; and
- (c) have been duly filed in accordance with the Act

8.2 Without prejudice to the generality of sub-paragraph 8.1

- (a) the Accounts:
 - (i) give a true and fair view of the state of affairs of the Company at the Accounts Date and the profits or losses of the Company for the financial period ending on that date;
 - (ii) contain proper provision or reserve for all liabilities and for all capital and revenue commitments of the Company as at the Accounts Date,
 - (iii) include all the assets of the Company as at the Accounts Date above £5,000,
 - (iv) make proper provision for bad and doubtful debts,
 - (v) do not include any figure which is referable to the value of an intangible asset, and
 - (vi) make proper provision for depreciation of the fixed assets of the Company having regard to their original cost and life

8.3 The profits and losses of the Company shown in the Accounts were not, save as disclosed in the Accounts or in any note accompanying them, to any material extent affected by any extraordinary, exceptional, unusual or non-recurring income, capital gain or expenditure or by any other factor known to the Vendor rendering any such profit or loss for such period exceptionally high or low

8.4 The audited profit and loss accounts and audited balance sheet of the Company contained in the Accounts were prepared on a consistent basis with each other.

9. *Accounting records*

9 1 The accounting records of the Company comply with the requirements of sections 221 and 222 of the Act, do not contain or reflect any material inaccuracy or discrepancy at present and reflects all transactions entered into by the Company or to which it has been a party

9 2 All relevant financial books and records of the Company are in its possession or otherwise under its direct control

9.3 Where any of the records of the Company are kept on computer, the Company

(a) is the owner of or has the appropriate licences for all hardware and all software necessary to enable it to use the records as they have been used in its business to the date of this Agreement;

(b) does not share any hardware or software relating to the records with any person, and

(c) maintains adequate back up records and support in the event of any fault or failure of such computer hardware and software

10. *Events since the Accounts Date*

10 1 Since the Accounts Date there has been no material adverse change in

(a) the financial or trading position or prospects of the Company other than as resulting from changes in general economic conditions or from factors affecting companies carrying on similar businesses to a similar extent,

(b) the value or state of assets or amount or nature of liabilities as compared with the position disclosed in the Accounts, or

(c) in the turnover, direct or indirect expenses or the margin of profitability of the Company as compared with the position disclosed for the equivalent period of the last year

10 2 The Company has since the Accounts Date carried on its business in the ordinary course and without interruption, so as to maintain it as a going concern and paid its creditors in the ordinary course and within the credit periods agreed with such creditors

10 3 Since the Accounts Date no supplier of the Company has ceased or restricted supplies or so far as the Vendor is aware, threatened so to do, there has been no loss or material curtailment of the business transacted by the Company with any customer which at any time in the preceding financial year represented 5 per cent or more of the turnover of the Company and the Vendor is not aware of any circumstances which will give rise to any of the above.

10.4 Since the Accounts Date the Company has not

- (a) incurred or committed to incur
 - (i) material capital expenditure, or
 - (ii) any liability whether actual or contingent except for full value or in the ordinary course of business,
 - (b) acquired or agreed to acquire:
 - (i) any asset for a consideration higher than its market value at the time of acquisition or otherwise than in the ordinary course of business, or
 - (ii) any business or substantial part of it or any share or shares in a body corporate,
 - (c) disposed of or agreed to dispose of, any of its assets except in the ordinary course of business and for full value;
 - (d) repaid wholly or in part any loan except upon the due date or dates for repayment,
 - (e) issued or allotted share or loan capital, increased its authorised share capital, purchased or redeemed any shares, reduced or re-organised its share capital or agreed to do so; or
 - (f) declared or paid any distribution of profit except with the consent of XKO.
- 10.5 None of the debts included in the Accounts or any of the debts subsequently arising have been the subject of factoring by the Company and the Vendor is not aware of any circumstances which could result in any presently outstanding debt in excess of £10,000 not being paid in full

Financial

11 *Financial commitments and borrowings*

- 11.1 Accurate details of all overdraft, loan and other financial facilities available to the Company and the amounts outstanding under them at the close of business on the day preceding the date of this Agreement are set out in the Disclosure Letter and neither of the Vendor nor the Company has done anything, or omitted to do anything, as a result of which the continuance of any of those facilities might be affected or prejudiced
- 11.2 The Company is not a party to, nor has agreed to enter into, any lending, or purported lending, agreement or arrangement (other than agreements to give credit in the ordinary course of its business)
- 11.3 The Company is not exceeding any borrowing limit imposed upon it by its bankers, other lenders, its articles of association nor has the Company entered into any commitment or arrangement which might lead it so to do

- 11.4 No overdraft or other financial facilities available to the Company are dependent upon the guarantee of or security provided by any other person.
- 11.5 The Company is not, nor has it agreed to become bound by any guarantee, indemnity surety or similar commitment
- 11.6 Save as Disclosed in the Disclosure Letter, the Company does not have any credit cards in issue in its own name or that of any officer or employee of the Company or any person connected with any officer or employee.
- 11.7 The Company has not received any grants, allowances, loans or financial aid of any kind from any government departmental or other board, body, agency or authority which may become liable to be refunded or repaid in whole or in part
- 11.8 The Company has not engaged in financing of a type which is not required, to be or has not been, shown or reflected in the Accounts

11.9 The Company has no outstanding obligations in respect of a derivative transaction

12 *Insurances*

- 12.1 Material details of all insurance policies effected by the Company are set out in the Disclosure Letter. All such policies are valid and all premiums due have been paid
- 12.2 There are no claims outstanding or threatened, or so far as the Vendor is aware, pending, against the Company which are not covered by insurance and so far as the Vendor is aware, the Company has not done or omitted to do anything which might result in a material increase in the premium payable under any of the Company's insurance policies or render any of them void or voidable

Trading and contracts

13 *Contracts and commitments*

- 13.1 Complete copies of all of the Company's customer contracts are attached to the Disclosure Letter.
- 13.2 The Company is not a party to any agreement, arrangement or commitment which
- (a) relates to matters outside its ordinary business or was not entered into on arms' length terms,
 - (b) can be terminated in the event of any change in the underlying ownership or control of it or would be materially affected by such change,
 - (c) cannot be terminated, without giving rise to any liabilities on it, by it giving 6 months' notice or less,
- 13.3 The Company has not

- (a) outstanding any bid, tender, sale or service proposal which is material in relation to its business or which, if accepted, would be likely to result in a loss; or
 - (b) granted any power of attorney which is still outstanding
- 13.4 No material matter has arisen in respect of any contract to which the Company is a party which, so far as the Vendor is aware, is or could be construed as a potential or actual breach by any party thereto
- 13.5 All current clients and customers have reasonably promptly paid or procured the payment of any remuneration due to the Company
- 13.6 In the 12 months preceding the date of this Agreement, no current client or customer has sought to negotiate a reduction or material change in the terms of remuneration as contained in its contract with the Company
- 13.7 There is not outstanding any contract or arrangement to which the Company is a party and to which any director of the Company and/or any Associate thereof is interested whether directly or indirectly
- 13.8 No person is entitled to receive from the Company any introduction fee, brokerage or other commission in connection with the introduction of or continuation of any business to or with the Company
- 13.9 The Vendor does not believe that any customer or supplier of the Company who accounts for more than 5 per cent of the turnover or costs (as the case may be) of the Company will refuse to continue to deal with the Company as a result of the change of control of the Company effected pursuant to this Agreement.
14. *Terms of trade*
- The Company has not given any guarantee or warranty (other than any implied by law) in respect of any product or services sold or supplied by it
15. *Licences and consents*
- 15.1 So far as the Vendor is aware, accurate details of all licences, consents, permissions, authorisations and approvals required by the Company or which the Company knows will be required (except in relation to the Property and Intellectual Property) for the carrying on of its business are contained in the Disclosure Letter and all of them have been obtained by it and are in full force and effect
- 15.2 All reports, returns and information required by law or as a condition of any licence, consent, permission, authorisation or approval to be made or given to any person or authority in connection with the business of the Company have been made or given to the appropriate person or authority

16. ***Trading partners***

- 16.1 The Company does not act or carry on business in partnership with any other person and is not a member of any corporate or unincorporated body, undertaking or association
- 16.2 The Company is not a party to any joint venture agreement
- 16.3 The Company is not a party to any agency, distributorship, licence or management agreement which restricts its freedom to carry on its business in such manner as it may think fit in any part of the world.

17. ***Competition and trade regulation law***

- 17.1 So far as the Vendor is aware, the Company is not a party to any agreement or arrangement nor has it been engaged in any practice, which infringes Articles 81 or 82 of the EC Treaty, the Fair Trading Act 1973, Chapters I or II of the Competition Act 1998, the Enterprise Act 2002.

- 17.2 The Company has not

- (a) given any assurances, undertakings or commitments to, or is subject to, any order of or investigation by, or has received any request for information from,
- (b) received, nor so far as the Vendor is aware, is it likely to receive any process, notice or communication, formal or informal by or on behalf of,
- (c) been or is a party to any agreement or arrangement in respect of which a request for guidance or an application for negative clearance and/or exemption has been made to

the Office of Fair Trading, the Competition Commission, the Secretary of State, the European Commission in relation to any business of the Company.

18 ***Compliance with law***

- 18.1 The Company has not committed nor is it liable for, and no claim has been or, so far as the Vendor is aware, will be made that it has committed or is liable for, any criminal, illegal or unlawful act
- 18.2 The Company has not received notification that any investigation or inquiry is being, or has been, conducted by, or received any request for information from any governmental or other authority, department, board, body or governmental agency in respect of its affairs and, so far as the Vendor is aware, there are no circumstances which would give rise to such investigation, inquiry or request

19. ***Litigation and disputes***

- 19.1 Except for actions to recover any debt of the Company incurred in the ordinary course of the business owed to the Company where each individual debt and its costs outstanding amounts to less than £5,000

- (a) neither the Company nor any person for whose acts the Company may be liable is engaged in any litigation, arbitration, administrative or criminal proceedings, whether as claimant or respondent or otherwise;
- (b) no litigation, arbitration, administrative or criminal proceedings by or against the Company or any person for whose acts it may be liable are threatened or expected and, as far as the Vendor is aware, none are pending,
- (c) so far as the Vendor is aware, there are no facts or circumstances likely to give rise to any litigation, arbitration, administrative or criminal proceedings against the Company or any person for whose acts it may be liable

19 2 The Company is not subject to any order or judgment given by any court or governmental or other authority, department, board, body or agency nor has it been a party to any undertaking or assurance given to any court or governmental or other authority, department, board, body or governmental agency which is still in force, nor are there any facts or circumstances likely to give rise to it becoming subject to such an order or judgment or to be a party to any such undertaking or assurance in relation to the Company

Assets

20. *Ownership and condition of assets*

20 1 Each of the assets included in the Accounts or acquired by the Company since the Accounts Date (other than the Property and current assets subsequently disposed of or realised in the ordinary course of business) is owned both legally and beneficially by the Company free from Encumbrance and any third party rights and, if capable of possession, is in its possession

20 2 Each item of office equipment used by the Company is

- (a) in reasonable repair and condition and reasonably maintained, and
- (b) capable and will remain capable of doing the work for which it was designed or purchased until the time when (on the basis of depreciation adopted in the Accounts) it will have been written down to a nil value

20 3 The Company has not acquired, or agreed to acquire, any asset on terms that title to that asset does not pass until full payment is made or all indebtedness incurred in connection with the acquisition is discharged

21 *Charges and Encumbrances over assets*

21.1 No Encumbrance (other than a lien arising by operation of law in the ordinary course of trading) or other form of security or encumbrance or equity on, over or affecting the shares or the whole or any part of the undertaking or assets of the Company, including any investment in any other Company, is outstanding and, apart from this Agreement, there is no agreement or commitment to give or create any of them and no claim has been made by any person to be entitled to any of them.

21 2 No floating charge created by the Company has crystallised and so far as the Vendor is aware, there are no circumstances likely to cause such a floating charge to crystallise

21 3 All charges in favour of the Company have, if required, been registered in accordance with the provisions of Part XII of the Act

22 *Intellectual Property*

22 1 So far as the Vendor is aware, all material details of all registered Intellectual Property owned by the Company and copies of all licences and other agreements relating to registered Intellectual Property are contained in the Disclosure Letter.

22 2 All Intellectual Property used by the Company in its business is either

(a) in the sole legal and beneficial ownership of the Company free from all charges or other encumbrances, or

(b) the subject of valid licences from third parties in favour of the Company

(i) of which no notice to terminate has been received;

(ii) all parties which are at the date of this Agreement in compliance with all material obligations in those licences, and

(iii) in relation to which there are no outstanding disputes between the parties

22 3 In the case of registered Intellectual Property owned by the Company

(a) all renewal fees have been paid and renewals made by their due date and all such action reasonably necessary to preserve and maintain the registration has been taken;

(b) it is in full force and effect and has not been abandoned;

(c) in the case of pending applications, the Vendor is not aware of any reason why any such applications should not proceed to grant;

(d) none of the registered Intellectual Property is subject to any notified use, claim, application or attack by any other person

22.4 No licences have been granted by the Company to any person in respect of any Intellectual Property other than as set out in the Disclosure Letter

22.5 The Company owns or has the right to use all Intellectual Property required in connection with the conduct of its business as presently carried on

22 6 So far as the Vendor is aware, at no time during the past year has there been any unauthorised use or infringement by any third party of any Intellectual Property owned by the Company at the date of Completion

- 22.7 So far as the Vendor is aware, none of the processes employed, or products or services dealt in, by the Company infringes any rights of any third party relating to Intellectual Property and no claims have been made, threatened or so far as the Vendor is aware are pending, in relation to any Intellectual Property against the Company
- 22.8 Except in the ordinary course of business and on a confidential basis, no disclosure has been made of any of the confidential information, know how, technical processes, financial or trade secrets or customer or supplier lists forming part of the Intellectual Property owned by the Company
- 22.9 Any trading names used by the Company other than its corporate name are contained in the Disclosure Letter
- 22.10 The Company has not save as notified in the Disclosure Letter:
- (a) knowingly incorporated or combined Open Source Materials with the Intellectual Property owned by it, or
 - (b) knowingly distributed or licensed Open Source Materials in conjunction with any Intellectual Property owned by it
- 22.11 The Company owns all Intellectual Property in the SMARTI, MARTIAN and ERIC, software products and/or applications
23. *Data Protection Act*
- 23.1 So far as the Vendor is aware, the Company has complied in all respects with the provisions of the Data Protection Act 1984 (as amended, and where such provisions have not been superseded by the Data Protection Act 1998) and the Data Protection Act 1998 ("DPA") and the principles contained in the DPA.
- 23.2 Except as registered or notified under the DPA, the Company has either not held or processed any personal data or is exempt from registering or notifying under the DPA under one of the exemptions contained in the DPA
- 23.3 Insofar as it is processing personal data are subject to registration or notification
- (a) the Company holds and maintains full and accurate registration or notification under the DPA and has operated wholly within the terms of such registration or notification,
 - (b) so far as the Vendor is aware, no disclosure has taken place outside the terms of the Company's registration or notification
- 23.4 The Company has not been served with a notice under sections 10, 11 or 12 of the DPA.
- 23.5 The Company has not been served with any information or enforcement notice under the DPA and as far as the Vendor is aware, there are no circumstances which might give rise to the Company being served with such notice in the future

Employment

24. *Directors and employees*

- 24.1 Accurate details of the terms and conditions of employment of all employees of the Company, including the date of commencement of their continuous period of employment, their remuneration and notice periods are contained in the Disclosure Letter.
- 24.2 Accurate details of the terms of engagement of all persons who are consultants to the Company, including the date of commencement of their engagement, the role they undertake, the number of hours per week they commit to the Company, the fees paid to them, any other benefits provided to them (whether or not legally binding), the notice period required to terminate the relationship and holiday arrangements are contained in the Disclosure Letter.
- 24.3 True and complete copies of all contracts of employment and other documents relating to the employment of the Employees are contained in the Disclosure Letter.
- 24.4 True and complete copies of all consultancy agreements relating to the engagement of consultants are contained in the Disclosure Letter
- 24.5 The Company has maintained up to date adequate and suitable records regarding the service and terms and conditions of employment of each of its employees
- 24.6 Other than salary for the current month and pay in respect of accrued but untaken holiday for the current holiday year, no amount is owing to any present or former officer, employee or worker of the Company.
- 24.7 There is no share option or share incentive scheme in operation by or in relation to the Company for any of its officers or employees nor is the introduction of such a scheme proposed. The Company does not owe an obligation to any employee or former employees in respect of any such scheme or the introduction of such scheme
- 24.8 The Company has at all relevant times complied with all its material obligations under statute concerning the health and safety at work of its employees and there are no claims pending or threatened by any employee or third party in respect of any accident or injury which are not fully covered by insurance
- 24.9 Save as provided for or taken into account in the Accounts
- (a) There is no current claim or liability to make any payment of any kind to any person who is or has been an officer, employee or worker has been received or incurred by the Company whether under the Employment Rights Act 1996, Sex Discrimination Act 1975, the Race Relations Act 1976 and the Disability Discrimination Act 1995 or otherwise, and
- (b) no gratuitous payment of a material amount has been promised but not paid by the Company in connection with the actual or proposed termination or

suspension of employment or variation of any contract of employment of any present or former officer or employee

24.10 No officer or employee of the Company has given notice or is under notice of dismissal nor are there any service contracts between the Company and its officers or employees which cannot be terminated by the Company by three months notice or less without giving rise to a claim for damages or compensation (other than a statutory redundancy payment)

24.11 The Company has not, in contravention of the Companies Act 1985

- (a) entered into any arrangement involving the acquisition of non-cash assets from or disposal to,
- (b) granted any loan or quasi-loan to or entered into any guarantee or credit transaction with, or
- (c) provided any security in connection with any loan, quasi-loan or credit transaction to or with

any director or person connected with a director within the meaning of the Companies Act 1985.

24.12 Complete and accurate details of any employee who is currently absent from work or who is anticipated to be absent from work for any reason for a period of [one month] or more are Disclosed

24.13 So far as the Vendor is aware, all individuals engaged as sub-contracted field agents are self-employed and would not be classed as "employees" or "workers" of the Company for tax or employment law purposes

25 *Industrial relations*

25.1 The Company is not a party to any contract, agreement or arrangement with any trade union or other body or organisation representing any of its employees

25.2 The Company has not received a request for recognition pursuant to the Trade Union and Labour Relations (Consolidation) Act 1992

25.3 No dispute has arisen between the Company and a material number or category of its employees or workers in the last 12 months nor are there any present circumstances known to the Vendor which are likely to give rise to any such dispute.

25.4 No investigation is in progress or, so far as the Vendor is aware, planned to be made in respect of the Company by the Health and Safety Executive, the Commission for Racial Equality, the Equal Opportunities Commission or the Disability Rights Commission or any similar body

Property

26 ***Title***

- 26 1 The Property comprises all the properties presently owned, occupied, held, controlled or otherwise used by the Company and the Company is in actual and exclusive occupation and is the legal and beneficial owner of the Property
- 26 2 The Property is occupied or otherwise used by the Company under the Lease
- 26 3 All deeds and documents necessary to prove title to the Property are in the possession and control of the Company and consist of the original Lease
- 26 4 The Company has not had occasion to make any claim or complaint in relation to any neighbouring property or its use or occupation and there are no disputes, claims, actions, demands or complaints in respect of any Property which are ongoing nor are any disputes, claims, actions, demands or complaints anticipated and no notices materially affecting any Property have been given or received and not complied with.

27 ***Encumbrances***

- 27.1 The Property is not subject to any outgoings other than business rates, water rates and insurance premiums and, in the case of leasehold properties, rent, insurance rent and service charges
- 27 2 Save as apparent from inspection or disclosed in the Lease, the Vendor is not aware that the Property is subject to any restrictive covenant, reservation, stipulation, easement, profits à prendre, wayleave, licence, grant, restriction, overriding interest, agreement for sale, estate contract, option, right of pre-emption or other similar agreement or right vested in third parties

28. ***Statutory obligations***

Insofar as the Vendor is aware, the Company has complied with and is continuing to comply with all applicable statutory and by-law requirements with respect to the Property, and in particular with the requirements as to fire precautions under the Fire Precautions Act 1971 and under the Public Health Acts, the Offices, Shops and Railway Premises Act 1963, the Health and Safety at Work Act 1974, the Factories Act 1961 and the Shops Acts 1950 to 1956.

29. ***Adverse orders***

- 29 1 There are no compulsory purchase notices, orders or resolutions affecting the Property in respect of which the Company has received notice and there are no circumstances likely to lead to any being made
- 29 2 The Company has not received any notice relating to the closing, demolition or clearance orders, enforcement notices or stop notices affecting the Property and there are no circumstances likely to lead to any being made

30. *Leasehold properties*

- 30 1 So far as the Vendor is aware, the Lease is valid and in full force and there are no circumstances which would entitle any landlord or other person to exercise any power of entry or take possession of the Property, save as provided for in the Lease
- 30 2 The Company has paid the rent and observed and performed the covenants on the part of the tenant and the conditions contained in any Lease to which it is a party, and the last demands (or receipts for rent if issued) were unqualified.
- 30 3 All licences, consents and approvals required from the landlords and any superior landlords for the grant of the Lease and during the continuance of the Lease have been obtained and any material covenants on the part of the tenant contained in those licences, consents and approvals have been duly performed and observed.
- 30 4 There are no rent reviews outstanding or in progress under the Lease
- 30 5 Save as disclosed in the Lease and Licence for Alterations dated 21 October 2004, there is no obligation to reinstate the Property by removing or dismantling any alteration made to it by the Company or any of its predecessors in title and the Company has not received any notification that it has or is likely to incur any liability for dilapidation.
- 30 6 The Company has not in the past been the tenant of or guarantor of any leasehold premises not listed in Part 2 of Schedule 2 in respect of which any obligations or liabilities could still accrue to the Company.
- 30.7 The sale of the Shares will not constitute an assignment or other dealing in respect of the Property under the terms of the Lease

31. *Pensions*

- 31 1 Save for the Pension Scheme, there is not in operation by the Company and there has not, at any time, been in operation by the Company (and no proposal has been announced by the Company to enter into or establish) any plan, scheme, agreement, arrangement, custom or practice (whether legally enforceable or not or whether or not approved by the HM Revenue & Customs) for the payment of (or for the payment of any contribution towards), any pensions, allowances, lump sum or other like benefits payable on retirement, death, termination of employment (whether or not arising from a transfer of an undertaking within the meaning of the Transfer of Undertakings (Protection of Employment) Regulations 1981 or otherwise) or during periods of sickness or disablement, for the benefit of any of the current and former employees or current and former directors of the Company or for the benefit of the dependants of any of such employees or directors of the Company.
- 31 2 In relation to the Pension Scheme and each other plan, scheme, agreement or arrangement disclosed
- (a) Accurate details

- (i) of it (including copies of the current governing documentation, any insurance policy, booklets and announcements and relevant details of all employees who are members of it); and
- (ii) of the basis on which the Company and the employees who are members of it make, or are liable to make, contributions to it including copies of any relevant payment schedule required by the Payment Regulations

are contained in the Disclosure Letter or the disclosure bundle,

- (b) all contributions which are payable and any fees, charges and expenses due to be paid by the Company in respect of it and all contributions due from any of the employees as members of it have been duly made in accordance with all applicable laws or requirements and no services have been rendered for which an account or invoice has not been delivered,
- (c) no undertakings or assurances have been given to any of the employees of the Company as to the continuance, introduction, increase or improvement of any rights or entitlements in relation to pension, death, disability or retirement,
- (d) every person who has had a right to join, or apply to join, it has been properly advised of that right and no employee of the Company has been excluded from membership of it or from any of the benefits under it in contravention of Article 141 of the Treaty of Rome, section 62 Pensions Act 1995, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 (SI 1551/2000) or the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (SI 2002/2034),
- (e) all benefits (other than a refund of contributions with interest where appropriate, spouses' death in service and ill health early retirement pensions) payable on the death of a member while in service, or during a period of sickness or disability of a member, are fully insured under a policy effected with an insurance company to which section 659B of ICTA applies and all insurance premiums due have been paid and there are no circumstances in which such insurance would be invalidated. Each member has been covered for that insurance at the insurance company's usual rates and on its usual terms for persons in good health,
- (f) it provides only money purchase benefits as defined in section 181 of the Pensions Schemes Act 1993

31 3 The Company has complied with all of its obligations relating to stakeholder pension schemes under the Welfare Reform and Pensions Act 1999, the Payment Regulations and the Financial Services and Markets Act 2000

31 4 None of the employees of the Company have been transferred to the Company and/or another company within its group as a result of a transfer to which the Transfer of Undertakings (Protection of Employment) Regulations 1981 applies or applied where the previous employer operated an occupational pension scheme

31 5 No circumstances exist in relation to the Company which would or might result in the Vendor or the XKO Group becoming liable for the following in respect of a debt due from an employer in relation to a pension scheme:

(a) to pay any sum specified by a contribution notice as defined in section 38 Pensions Act 2004, and/or

(b) under a financial support direction as defined in section 43 Pensions Act 2004

31 6 The Company is under no liability in respect, nor is it required to make any payment in respect of any scheme for the provision of pension or retirement benefits save as in respect of the Pension Scheme

Schedule 4

(Limitations on Liability)

1. XKO agrees with the Vendor that any Claim shall be governed by and shall be dealt with in accordance with the following provisions of this Schedule 4. Where it is necessary to determine whether a monetary limit or threshold set out in this Schedule 4 has been reached or exceeded (as the case may be), the value of the relevant Claim or any of the relevant Claims shall not include any liability in respect of the reasonable costs and expenses incurred in association with that Claim or Claims.
2. The liability of the Vendor in respect of any Claim shall be limited as follows:
 - (a) XKO shall not be entitled to recover any amount in respect of a breach of any of the Warranties or under the Tax Covenant unless the amount of each individual Warranty Claim exceeds the sum of £25,000 and the amount recoverable, when aggregated with all other amounts recoverable for breach of the Warranties or under the Tax Covenant, exceeds the sum of £250,000, in which event this limitation shall cease to apply and the whole of such amounts shall be recoverable and not merely the excess over the sum of £250,000, and
 - (b) the aggregate liability of the Vendor in respect of all and any Claims shall be limited to the cash Consideration actually received by the Vendor (whether before or after any Claim is notified to the Vendor in accordance with and subject to this Schedule 4 or under the Tax Covenant) and for the purposes of this clause consideration payable by way of Guaranteed Loan Notes shall be deemed to be cash Consideration only and to the extent that XKO has paid the cash due to Lloyds and Lloyds have issued the relevant Lloyds Guarantee; and
 - (c) the aggregate liability of the Vendor in respect of Claims pursuant to clause 16.3 shall not exceed £7,500,000
3. Save in the case of fraud or wilful non-disclosure, the Vendor shall cease to have any liability
 - (a) for breach of any of the Non-Tax Warranties, on the second anniversary of Completion, and
 - (b) for breach of the Tax Warranties and under the Tax Covenant on the seventh anniversary of Completion,
 - (c) under the indemnity contained in Clause 16.3, on the date which is 30 months from Completion

except in respect of a Claim of which XKO gives notice to the Vendor before the relevant date and of which such Claim has not become an Agreed Claim as at the relevant date. When giving such notice, XKO shall specify, in such detail as is reasonably available to it at that time, the nature of the potential liability and, so far as is practicable, the amount likely to be claimed in respect of it.

4. The Vendor shall have no liability in respect of any claims by XKO in respect of any breach of any of the Warranties
- (a) to the extent that the matter which is the subject matter of the Claim has been Disclosed,
 - (b) to the extent that and in relation to the matter giving rise to the Claim specific provision, reserve or allowance has been made and was specifically referred to in the Accounts and/or the Working Capital Statement;
 - (c) to the extent that the Company (i) is insured against any loss or damage suffered by the Company forming the basis of the Claim in question under the terms of any insurance policy of the Company for the time being in force and (ii) actually recovers under such insurance policy;
 - (d) the extent that the Company (i) is entitled to recover from a third party any sum in respect of any matter giving rise to a Claim and (ii) actually recovers from such third party,
 - (e) to the extent that the Claim is adequately compensated for by a corresponding reduction in the Consideration payable to the Vendor by reference to the EBIT for the First Earn-Out Period or the Second Earn-Out Period (as the case may be) and
 - (f) to the extent that the matter giving rise to the Claim would not have arisen or so increased but for the passing of, or a change in, after the date of this Agreement a law, rule, regulation, interpretation of the law or published practice or concession of a government, governmental department, agency, regulatory body or Tax Authority or an increase in the Tax rates, in each case not actually or prospectively in force at the date of this Agreement
- 5 All and any liability of the Vendor in respect of any Claim (other than a Claim under clause 16) notified to them in accordance with this Schedule 4 shall be extinguished on the expiry of 6 months from
- (a) if the notification was in respect of a Claim which is contingent or not capable of being quantified, the date the Claim ceases to be contingent or becomes capable of being quantified, or
 - (b) if the notification was not in respect of a Claim which is contingent or not capable of being quantified, the date of such notification of the Claim,
- unless, in each case, XKO shall within such period have issued and validly served on the Vendor proceedings in respect of such Claim.

6. The Vendor shall not be liable for any Warranty Claim if and to the extent that it arises or is increased by a failure of XKO to comply with its obligations under this Agreement.
7. Where the subject matter of any Claim under the Warranties is capable of remedy, the Vendor shall not be liable for any Claim if the breach or default is remedied in full within 28 days of the receipt by the Vendor of the notification of the Claim.
8. If the Vendor pays to or for the benefit of any XKO Group Company or the Company an amount in respect of any Claim other than Claims under the Tax Covenant or under clause 16 and any member of XKO's Group or the Company subsequently receives from any other person any payment or benefit in respect of the matter giving rise to the Claim, XKO shall thereupon pay to the Vendor an amount equal to the payment or benefit received (except to any extent that the liability of the Vendor in respect of the Claim was reduced to take account of such payment or benefit).
9. The Vendor shall not be liable in respect of any Claim other than Claims under the Tax Covenant or under clause 16 to the extent that it arises or is increased as a result of any change on or after Completion of ownership of the Company or change in the accounting bases, policies, practices or methods applied in preparing any accounts or valuing any assets or liabilities of the Company from those used in preparing the Accounts or subsequent audited accounts of the Company
10. The Vendor shall not be liable in respect of any Claim other than Claims under the Tax Covenant or under clause 16 to the extent that it relates to a liability which is contingent or not capable of being quantified unless and until the liability ceases to be contingent or becomes capable of being quantified, as the case may be
11. The liability of the Vendor under the Tax Covenant shall be reduced if and to the extent that the Liability to Taxation shall have been recovered under the Warranties or under any other part of the Tax Covenant (and vice versa)
- 12.
- 12.1 Subject to paragraph 12.2 below, if any matter comes to the notice of XKO, or the Company which may give rise to a liability under the Warranties other than a Taxation liability for which a Claim may be made under the Tax Warranties, XKO shall (and shall procure that the Company shall)
 - (a) as soon as reasonably practicable give notice of that matter to the Vendor, specifying in such detail as is reasonably available to it at that time the nature of the potential liability and, so far as is practicable, the amount likely to be claimed in respect of it,
 - (b) consult with, and take reasonable notice of the representations of, the Vendor before making any admission of liability, agreement or compromise with any person, body or authority in relation to that matter,
 - (c) in respect of any third party claim which may give rise to a liability under the Warranties (but not otherwise) and save where to do so would or might

reasonably endanger a XKO Group Company of its legal privilege in any accounts, documents or records, or render unavailable any applicable insurance coverage give the Vendor and his professional advisers reasonable access at any reasonable times to the premises and personnel of XKO and/or the Company (as the case may be) and to any relevant chattels, accounts, documents and records within the power or control of XKO and/or the Company so as to enable the Vendor and his professional advisers to examine such premises, chattels, accounts, documents and records and to take copies at their own expense

12.2 Paragraph 12.1 shall not apply to a Claim arising under the Tax Covenant

12.3 For the avoidance of doubt

- (a) nothing in this Schedule shall limit XKO's obligation to mitigate its loss in respect of a claim by XKO in respect of any breach of the Warranties, and
- (b) neither XKO nor the Company shall be entitled to recover damages in respect of any claim by XKO in respect of any breach of the Warranties or otherwise obtain reimbursement or restitution more than once whether under the Warranties or any other provision of this Agreement in respect of the same loss or damage

Schedule 5

Tax Schedule

Part 1 - Definitions and interpretation

1. Definitions and interpretation

- 1.1 In this Agreement, unless the context otherwise requires, the following words have the following meanings.

"CAA" means Capital Allowances Act 2001

"Claim for Taxation" means any notice, demand, assessment, letter or other document issued or action taken by any Tax Authority (including the Company) indicating that any person is or may be placed or sought to be placed under either a Liability to Taxation or a claim for Taxation to which paragraph 5 may apply.

"Event" means any act, event or transaction including, without limitation, the receipt or accrual of any income, profit or gain, the declaration, making or payment of any dividend or other distribution, membership of or ceasing to be a member of any group, partnership or other association, and the death, residence or change of residence of any person for Tax purposes

"ICTA" means the Income and Corporation Taxes Act 1988.

"ITIEPA" means the Income Tax (Earnings and Pensions) Act 2003

"Liability to Taxation" means

- (a) any liability to make a payment of or in respect of Taxation regardless of whether such Taxation is chargeable or attributable directly or primarily to the Company,
- (b) the loss of any Relief which would (were it not for the loss) have been available to the Company and which has been treated as an asset in preparing the the Accounts or taken into account in computing (and so reducing) or obviating any provision for deferred taxation which appears in the the Accounts (or which, but for the availability or presumed availability of such Relief prior to its loss, would have appeared in the the Accounts),
- (c) the setting off against any liability to Taxation or against Profits earned, accrued or received before Completion of any Relief which arises in respect of any period after Completion or in respect of any Transaction effected after Completion in circumstances where, but for the setting off, the Company would have had a liability to Taxation in respect of which Xena (ignoring any limitations on liability contained herein) would have been able to make a claim against the Vendor under the Tax Covenant,
- (d) any liability to make a payment by way of indemnity arising out of or in connection with Taxation, and

- (e) references to a Liability to Taxation shall include the settlement of a Claim for Taxation.

"Profits" means income, profits and gains, the value of any supply and any other consideration, value or receipt used or charged for Taxation purposes and references to **"Profits earned, accrued or received"** include Profits deemed to have been earned, accrued or received for Taxation purposes

"Purchaser's Relief" means a Relief falling within paragraphs (b) or (c) of the definition of Liability to Taxation

"Relief" means any relief, loss, allowance, exemption, set-off, deduction or credit in computing or against Profits or Taxation or any right to repayment of Taxation and references to the **"loss of any Relief"** include the loss, reduction, counteraction, disallowance, setting-off against Profits, crediting against a liability to make an actual payment of Taxation or failure to obtain a Relief and **"lose"** and **"lost"** shall be construed accordingly

"Tax", "Taxes" or "Taxation" means all forms of taxation and statutory, governmental, supra governmental, state, provincial, local governmental or municipal impositions, duties, contributions and levies (including withholdings and deductions), whether of the United Kingdom or elsewhere in the world, whenever imposed and however arising and all penalties, fines, charges, costs and interest, together with the cost of removing any related charge or other encumbrance

"Tax Authority" means any taxing or other authority, body or official competent to administer, impose or collect any Taxation.

"Tax Claim" means a claim by Xena against the Vendor under the Tax Covenant or that any of the Taxation Warranties is untrue or inaccurate or, as the case may be, a claim by the Vendor against Xena under the covenant in paragraph 5

"TCGA" means the Taxation of Chargeable Gains Act 1992

"TMA" means the Taxes Management Act 1970

"Transaction" means any transaction, deed, act, event, omission, payment or receipt of whatever nature and whether actual or deemed for Tax purposes and references to **"any Transaction effected before Completion"** include the combined result of two or more Transactions, any one of which shall have taken place or commenced (or be deemed to have taken place or commenced).

- (i) before Completion and was not in the ordinary course of business, and
- (ii) after Completion and was in the ordinary course of business.

"VATA" means the Value Added Tax Act 1994

"Vendor Associate" means any Vendor or the Company and any other person with whom the Vendor or the Company is either associated (within the meaning of section 417 ICTA) or connected (within the meaning of Section 839 ICTA)

1 2 In this Schedule

- (a) a reference to a jurisdiction shall include any union (including for the avoidance of doubt, the European Union), country, state, province, district or division of whatever nature which imposes or raises Taxation,
- (b) a reference to any law shall include any statute, law, regulation, treaty, notice, *directive or similar provision relating to Taxation*, whether of the United Kingdom or elsewhere;
- (c) references to specific parts of the law of the United Kingdom shall be taken to include a reference to the law of any other jurisdiction so far as the same may apply to the Company and may be similar to or have a similar purpose to the law of the United Kingdom to which reference is made, and
- (d) references to the VATA shall include all law relating to value added tax in the United Kingdom and any value added, turnover, sales, purchase or similar tax of any other jurisdiction and references to value added tax shall be construed accordingly

- 1.3 It shall be assumed for all of the purposes of this Tax Schedule (and in particular for calculating any Liability to Taxation or any Relief) that the date of Completion is the end of an accounting period for the purposes of Section 12, ICTA (basis of and periods of account) and all such adjustments and apportionments as may be required consequent upon such assumption shall be made in assessing any liability or in making any calculation required under this Schedule

Part 2 - Tax Warranties and Undertakings

2 Tax Warranties

Events since the Accounts Date

2 1 Since the Accounts Date

- (a) no transaction has occurred, either in circumstances where the consideration actually received or receivable (if any) was less than the consideration which could be deemed to have been received for Tax purposes or which will give rise to a Liability to Taxation on the Company calculated by reference to deemed as opposed to actual Profits,
- (b) no transaction has occurred which will result in the Company becoming liable to pay or bear a Liability to Taxation directly or primarily chargeable against or attributable to another person;
- (c) no disposal has taken place or other event occurred which will have, the effect of crystallising a Liability to Taxation which would have been included in the provision for deferred taxation contained in the Accounts if such disposal or other event had been planned or predicted at the Accounts Date,
- (d) the Company has not been a party to any transaction for which any Tax clearance provided for by statute has been, or could have been, obtained; and
- (e) no accounting period or period of account by reference to which Taxation is measured of the Company has ended within the meaning of Section 12, ICTA (basis of, and periods for, assessment).

Records and compliance

2 2 The Company has duly complied with all requirements relating to Tax imposed on it by law and in particular

- (a) the Company has paid all Taxation for which it is liable and made all withholdings and deductions in respect, or on account, of any Taxation from any payments made by it which it is obliged or entitled to make and has paid to the appropriate Tax Authority all amounts so withheld or deducted,
- (b) the Company will not be liable to pay any Tax the due date for payment of which will arise in the 30 days following Completion,
- (c) the Company has properly prepared and punctually submitted all notices, returns and applications for clearances or consents required for Tax purposes and provided materially complete and accurate information to any Tax Authority and all such notices, returns, applications and information remain materially complete and accurate and in compiling the same the Company has not taken the benefit of any doubt, such that the relevant Tax Authority may discover information of which it was not reasonably aware and thereby make an enquiry into or dispute the Tax affairs of the Company;

- (d) the Company has kept and maintained accurate records, invoices and other documents and information of whatever nature appropriate or requisite for Tax purposes and has sufficient such records, invoices and other documents and information relating to past events to calculate its Liability to Taxation or the Relief from Taxation which would arise on any disposal or on the realisation of any assets owned at Completion;
 - (e) there are no disputes, unsettled or outstanding assessments or appeals in respect of Taxation and the Company has not within the last six years been subject to any enquiry, investigation or other dispute with any Tax Authority and so far as the Vendor is aware there are no circumstances which may give rise to such an enquiry or dispute,
 - (f) the Company has not within the last six years been liable or will in respect of any Transaction occurring before Completion become liable to pay any interest, penalty, fine or sum of a similar nature in respect of Taxation nor, in relation to value added tax, has received any penalty liability notice, surcharge liability notice or other written notice or warning under the VATA, and
 - (g) the Company has duly submitted all claims and elections which have been assumed to have been made for the purposes of the Accounts.
- 2.3 The Company has at all times been resident for Tax purposes in the UK and the Company has not during the past six years paid and is not liable to pay Tax in any other jurisdiction
- 2.4 The Company has not within the last six years received any audit, visit or inspection from any Tax Authority and no such audit, visit or inspection to take place on or after Completion has been arranged or requested.
- 2.5 The amount of Tax chargeable on the Company or subject to withholding or deduction by the Company during any accounting period ending on or within the last six years has not to any material extent depended on any concession, agreement, dispensation or other formal or informal arrangement with any Tax Authority
- 2.6 The Company is not liable to be assessed to Tax as agent for, or on account of, or otherwise on behalf of, any other person
- 2.7 The Company has not made any claim or application to pay any Tax by instalments or to defer the payment of any Tax
- 2.8 Details of all amounts of corporation tax paid or payable in the last three years by the Company by instalments pursuant to Section 59E, TMA, or any regulations made pursuant to that section, are set out in the Disclosure Letter, together with the basis upon which such instalments were or are to be calculated
- 2.9 The Company follows UK GAAP in calculating its profits and gains for Tax purposes and the Company is not required to calculate such profits and gains in accordance with International Accounting Standards

Employee shares

- 2 10 No shares or securities have been issued by the Company, and no options have been granted or issued in respect of such shares or securities, such that the Company will or may be liable to account for income tax under the PAYE system or to collect or pay any national insurance contributions.
- 2 11 No shares or securities have been issued by the Company, and no reportable event under Section 421K, ITEPA has occurred, such that the Company will or may be liable to make a notification to HM Revenue & Customs under Section 421J, ITEPA

VAT

2.12 The Company

- (a) is registered for the purpose of, and has complied in all respects with, the VATA and is not subject to any conditions imposed or agreed with any Tax Authority, and
- (b) is not, and has not within the last three years been a member of a group for value added tax purposes under Section 43, VATA (groups of companies).

2.13 The Company is not subject to The Value Added Tax (Payments on Account) Order 1993

2.14 All supplies made by the Company are taxable supplies, and all input tax for which the Company has claimed credit has been paid by the Company, in respect of supplies made to it relating to goods or services used or to be used for the purpose of the business of the Company.

2 15 The Company has not been required to give security under paragraph 4, Schedule 11, VATA (power to require security and production of evidence)

2 16 The Company has not made, nor will prior to Completion make, any election to waive exemption under paragraph 2, Schedule 10, VATA (election to waive exemption)

2 17 The Disclosure Letter contains materially complete details of all assets owned by the Company to which the provisions of Part XV, Value Added Tax Regulations 1995 (the Capital Goods Scheme) may apply, including the date of acquisition, the cost of the asset, the amount of the input tax for which credit has been claimed and the adjustment period relating to that asset

2 18 The Company has not claimed credit for any input tax where the whole or any part of the consideration for the relevant supply remains outstanding for more than 6 months after the date of the invoice

Customs duties

2.19 The Company has made all necessary returns in relation to the collection and payment of customs duties, excise duties and other Taxes having an equivalent effect and has provided to any relevant Tax Authority all necessary information, returns and documentation and paid all amounts due in relation to the same and within the prescribed time limits

- 2.20 Details of all bonds, recognisance and guarantees given to any relevant Tax Authority, or of any duty deferment scheme or arrangement taken or claimed, by or in relation to the Company are set out in the Disclosure Letter.

Balance sheet values

- 2 21 No Liability to Taxation will arise or be incurred on a disposal by the Company of any of its assets for
- (a) in the case of each asset owned at the Accounts Date, a consideration equal to the value attributed to that asset in preparing the Accounts, and
 - (b) in the case of each asset acquired since the Accounts Date, a consideration equal to the consideration given for the acquisition
- 2 22 The Company has not at any time in respect of any asset owned at the date hereof made, nor will prior to Completion make, any claim under Sections 152 to 158 (inclusive), TCGA (replacement of business assets) and there is no proposal or plan to make any such claim either in the claims and elections assumed to have been made for the purposes of the Accounts or otherwise

Close company

- 2 23 The Company is a close company within the meaning of Section 414, ICTA (close companies)
- 2 24 The Company has not at any time made any loan or advance or payment or given any consideration or effected any transaction falling within Sections 419 to 422 (inclusive), ICTA (loans to participators etc)

Deductible expenses

- 2 25 The Company has not since the Accounts Date made or provided and is not currently under any obligation currently or for the future to make, any payment of an income or revenue nature which, or to provide a benefit the cost of which, will be prevented from being deductible for Tax purposes, whether as a deduction in computing the profits of a trade or as an expense of management or as a charge on income
- 2 26 The accounting treatment adopted by the Company in its accounts in relation to any loan relationship as defined in Section 81, Finance Act 1996 (meaning of "loan relationships" etc) is in accordance with generally accepted accounting practice for the purposes of Section 85, Finance Act 1996 (authorised accounting methods)
- 2 27 The Company has not been a party to a loan relationship treated as being for an unallowable purpose within the meaning of Paragraph 13 Schedule 9, Finance Act 1996 (loan relationships for unallowable purposes)

Dividends and distributions

- 2 28 The Company has not at any time purchased, repaid or redeemed or agreed to purchase, repay or redeem its share capital, or capitalised or agreed to capitalise in the

form of redeemable shares or debentures any profits or reserves, or otherwise issued any share capital or other security as paid up otherwise than by the receipt of new consideration within the meaning of Section 254, ICTA (interpretation of Part VI)

- 2 29 The Company has not at any time been a party to or otherwise involved in any transaction to which Sections 213 to 218 (inclusive), ICTA (exempt distributions etc) applied

Inheritance tax and gifts

- 2 30 No circumstances exist under which any power within Section 212, Inheritance Tax Act 1984 (powers to raise tax) could be exercised in relation to, and there is no Inland Revenue charge (within the meaning of Section 237, Inheritance Tax Act 1984 (imposition of charge)) attaching to, or which may attach to any shares or securities in or over any assets of the Company
- 2 31 The Company is not liable and there are no circumstances in existence as a result of which it may become liable to be assessed to Tax as donor or donee of any gift or transfer or transferee of value

Anti-avoidance

- 2 32 The Company has not
- (a) entered into, or been party to, any scheme or arrangement designed for the purpose of avoiding Taxation, such that a Liability to Taxation may arise after Completion as a result of or in consequence of such a scheme or arrangement, or
 - (b) acquired or disposed of any asset, or entered into any Transaction whatsoever, otherwise than by way of a bargain at arm's length
 - (c) entered into any arrangements to which Section 19 (Disclosure of VAT Avoidance Schemes) or Part 7 (Disclosure of Tax Avoidance Schemes) Finance Act 2004 or any regulations made there under, has applied

ACT

- 2.33 As at 6 April 1999, no surplus advance corporation tax existed within the Company, such that Section 32, Finance Act 1998 or any regulations made under that section could apply

Liability for tax primarily due from another person

- 2.34 No Transaction has occurred in consequence of which the Company has incurred a Liability to Taxation primarily chargeable against some other person (whether by reason of another company being or having been a member of the same group of companies or otherwise)

Capital Allowances

- 2.35 The value attributed in the Accounts to each asset or pool of assets is such that on a disposal of each such asset or pool of assets on the Accounts Date for a consideration equal to such value or aggregate value no balancing charge would have arisen under any law relating to capital allowances
- 2.36 Since the Accounts Date the Company has not done or omitted to do or agreed to do or permitted to be done any act as a result of which the Company could be required to bring a disposal value into account or suffer a balancing charge or be subject to recovery of excess relief or a withdrawal of allowances for the purpose of the CAA

Stamp duty land tax

- 2.37 The Disclosure Letter contains details of any liability to stamp duty land tax that the Company may have incurred.
- 2.38 The Disclosure Letter contains details of any lease transaction entered into by the Company to which schedule 17A, Finance Act 2003 applies

3 Stamp duty

- 3.1 All documents which are required to be stamped and which are in the possession of the Company, or by virtue of which the Company has any right, have been duly and sufficiently stamped or the Taxation on such documents has been paid, and no such document has been executed and retained outside the United Kingdom in circumstances in which a liability to stamp duty or Taxation would arise if such document were to be brought into the United Kingdom

Part 3 - Covenants to and from Xena

4. Tax Covenant

4.1 Subject to Part 4 of this Schedule 5, the Vendor shall pay to Xena an amount equal to any Liability to Taxation of the Company

- (a) arising directly or indirectly from any Transaction effected on or before Completion,
- (b) in respect of, or by reference to, any Profits earned, accrued or received on or before Completion,
- (c) which would not have arisen but for the failure by any person who is or has been a Vendor Associate to discharge a Liability to Taxation which falls upon such Vendor Associate
 - (i) arising directly or indirectly from any Transaction effected or deemed to have been effected at any time by such Vendor Associate, or
 - (ii) in respect of any Profits earned, accrued or received at any time by such Vendor Associate,

and none of the limitations on liability or other exclusions provided for by paragraph 6 below or any other provision of this Agreement shall apply to this sub-paragraph,

- (d) which arises on or with respect to any income, earnings or other payment or sum (whether in cash or in kind) paid or payable at any time, benefits given or to be given at any time or loans or advances made or to be made at any time (or which are deemed for tax purposes to be made) to the Vendor or any Vendor Associate and none of the limitations on liability or other exclusions provided for by paragraph 6 below or any other provision of this Agreement shall apply to this sub-paragraph;

together with all costs and expenses reasonably and properly incurred by Xena or the Company in connection with any such Liability to Taxation or Claim for Taxation or in bringing any claim or defending any action under the provisions of Part 3 of this Schedule 5

4.2 Where the Vendor becomes liable to make any payment under the Tax Covenant, the due date for the making of that payment shall be.

- (a) in a case that involves an actual payment of Taxation by the Company, the date that is the last date on which the Company is liable to pay to the appropriate Tax Authority the Taxation in question in order to avoid incurring a liability to interest or penalties or, if later, five Business Days following a written demand from Xena,

(b) in the case of the loss of any Relief, the date falling five days following the date when the Vendor has been notified by Xena that the Vendor has a liability for a determinable amount in respect of the loss of such Relief under the Tax Covenant; or

(c) in any other case, the date falling five Business Days following the date on which the Vendor receives a written demand for such amount from Xena

4 3 In a case of a loss of any Relief, the amount that is to be treated under the Tax Covenant as a Liability to Taxation shall

(a) be the amount of that Relief, if the Relief that was the subject of the loss was either a deduction from or offset against Taxation or a right to a repayment of Taxation,

(b) be the amount of Taxation which has been saved in consequence of the setting off where the Relief that was the subject of the loss was a deduction from or offset against gross Profits, and the Relief was the subject of a setting off, and

(c) in any other case where the Relief that was the subject of the loss was a deduction from or offset against gross Profits, be the amount of Taxation which would, on the basis of the rates of Taxation current at the date of the loss, have been saved but for the loss

4 4 If, in respect of or in connection with any Claim, or otherwise in connection with any payment made under this Agreement, any amount payable to Xena by the Vendor is subject to Taxation (ignoring the availability of any Relief), the amount to be paid to Xena by the Vendor shall be increased by such additional amount as will ensure that the net amount received by Xena after such Taxation has been taken into account is equal to the full amount which would be payable to Xena had the amount not been subject to Taxation and Xena shall be entitled to claim any additional amount due under this clause 4 4 at any time and on any number of occasions at or after the time that the initial Claim is made or is payable

5 Covenant to Vendor

5 1 Xena covenants with the Vendor to pay to the Vendor an amount equal to any Taxation which is assessed on the Vendor pursuant to either section 767A or section 767AA, ICTA by reason of Taxation assessed on or primarily or directly attributable to Xena, any member of Xena's group or the Company for any accounting period remaining unpaid provided that this covenant shall not apply to any Taxation in respect of which Xena is entitled to bring a Tax Claim against the Vendor or would have been so entitled but for paragraphs 6 (Limitations), 7 (Repayment) and 8 (Over-provision and Reliefs) of this Part 3 of Schedule 5 or clause 15 of the Agreement (Limitations).

5 2 The Vendor covenants that he shall make no claim under paragraph 5 1 above to the extent that he shall have recovered the Taxation in question under section 767B(2), ICTA and that to the extent that he recovers any amount under paragraph 5.1 he shall not seek to recover payment under section 767B(2)

- 5.3 The provisions of paragraphs 4.2 (date of payment), 4.4 (grossing up), 7 (Repayment) and 9 (Claims Procedure) shall apply to this covenant as if references to the "Purchaser" were to the "Vendor" (and vice versa), references to the "the Company" were also to the "Vendor" and references to "Tax Covenant" were to the "covenant under paragraph 5"

Part 4 - Limitations and general

6 Limitations on liability

- 6.1 The liability of the Vendor under the Tax Covenant shall be reduced if and to the extent that the Liability to Taxation shall have been recovered under the Warranties (and vice versa)
- 6.2 The Vendor shall not be liable to Xena for a Tax Claim in respect of any Liability to Taxation:
- (a) to the extent that provision or reserve in respect of that Liability to Taxation was included in the Accounts or to the extent that the payment or discharge of such Liability to Taxation has been taken into account in the Accounts and/or the Working Capital Statement,
 - (b) to the extent that the Liability to Taxation arises or is increased as a result only of:
 - (i) any increase in rates of Taxation,
 - (ii) any change in law or in the published practice of any Tax Authority,
 - (iii) any change in the bases upon which the accounts of the Company are prepared or any change in accounting practice or principles except in either case in order to comply with generally accepted accounting practice, or
 - (iv) any change in the date to which the Company makes up its Accounts, made in any such case after Completion.
 - (c) where such Liability to Taxation arises or is increased as a result of any voluntary act, voluntary Transaction or omission carried out or effected by the Company or Xena or Xena Group Company otherwise than in the ordinary course of business of the Company as carried on at Completion which Xena or, as appropriate, the Company knew or ought reasonably to have known would give rise to or increase in the liability in question, other than any act or omission carried out or effected
 - (i) under a legally binding commitment created on or before Completion,
 - (ii) in order to comply with any law or in order to comply with generally accepted accounting principles in each case which were in force prior to Completion and in respect of which the Company had failed to comply; or
 - (iii) at the request of the Vendor

7. Repayment

If the Vendor shall make any payment to Xena in relation to any Tax Claim and Xena or the Company subsequently receives from any Tax Authority or any person any amount referable to the subject matter of that Tax Claim, Xena shall, once it or the Company has received such amount, repay (after deducting the reasonable costs and expenses of Xena incurred in recovering such amount and any Taxation payable on it) to the Vendor either

- (a) a sum equal to such amount, or
- (b) if lesser a sum equal to the Tax Claim paid by the Vendor to Xena,

together with any interest paid to Xena or the Company in respect of such sum.

8 Over-provision and Reliefs

- 8.1 If the auditors for the time being of the Company shall certify (at the request and expense of the Vendor) that any provision on the balance sheet for Taxation in the Accounts and/or any accrual in the Working Capital Statement (excluding any provision for deferred taxation) has proved to be an over-provision, then the amount of such over-provision shall be dealt with in accordance with paragraph 8.3 below provided that any over-provision arising as a result of the following events shall be excluded from the provisions of this paragraph 8:

- (a) any increase in rates of Taxation,
- (b) any change in law or in the published practice of a relevant Tax Authority,
- (c) any change in the bases upon which the Accounts of the Company are prepared or any change in accounting practice or principles except in either case in order to comply with generally accepted accounting practice, or
- (d) any change in the date to which the Company makes up its Accounts,

- 8.2 If the auditors for the time being of the Company shall certify (at the request and expense of the Vendor) that any Liability to Taxation which has resulted in a payment having been made or becoming due from the Vendor under the Tax Covenant will give rise to a Relief for the Company (other than a Purchaser's Relief) which would not otherwise have arisen, then as and when such Relief reduces a liability to make an actual payment of Tax (other than a liability for which Xena would be entitled to bring a Tax Claim), the amount of that reduction shall be dealt with in accordance with paragraph 8.3 below

- 8.3 Where it is provided under paragraphs 8.1 or 8.2 that any amount (the "relevant amount") is to be dealt with in accordance with this sub-clause

- (a) the relevant amount shall first be set-off against any payment then due from the Vendor under the Tax Covenant,
- (b) to the extent that there is an excess, a refund shall be made to the Vendor of

any previous payment made by the Vendor under the Tax Covenant (to the extent not previously refunded under this paragraph 8) up to the amount of such excess, and

- (c) to the extent that the excess referred to in paragraph 8.3(b) above is not exhausted under that paragraph, the remainder of the excess shall be carried forward and set off against any future payment or payments which become due from the Vendor under the Tax Covenant

8.4 Where any certification referred to in paragraphs 8.1 or 8.2 has been made, the Vendor or Xena or the Company may request the auditors to review such certification in the light of all relevant circumstances, including any facts which have become known only since such certification, and to certify whether such certification remains correct or whether the certified amount should be amended

8.5 If the auditors certify under paragraph 8.4 that an amount previously certified should be amended, that amended amount shall be substituted for the purposes of paragraph 8.3 as the relevant amount in respect of the certification in question in place of the amount originally certified, and such adjusting payment (if any) as may be required shall be made as soon as practicable by the Vendor or (as the case may be) to the Vendor to give effect to the revised certification.

9. Claims Procedure

9.1 Upon Xena or the Company becoming aware of a Claim for Taxation which may result in a Tax Claim Xena shall

- (a) as soon as reasonably practicable but in any event where the time for appeal or response is limited not less than 14 days prior to the date on which the time for the appeal or response expires (but not as a condition precedent to the making of a Tax Claim) give written notice of that Claim for Taxation to the Vendor or, as the case may be, shall procure that the Company forthwith give written notice of that Claim for Taxation to the Vendor,
- (b) subject always to the terms of this paragraph 9 and the Vendor agreeing to indemnify Xena and/or the Company to its reasonable satisfaction against all losses, costs, damages and expenses, including interest on overdue Tax, which may be incurred, further procure that the Company take such action and give such information and assistance in connection with the affairs of the Company as the Vendor may reasonably and promptly by written notice request to avoid, resist, appeal or compromise the Claim for Taxation.

9.2 Xena shall not be obliged to procure that the Company appeals against any tax assessment if, the Vendor having been given written notice of the receipt of that Claim for Taxation in accordance with paragraph 9.1 above, the Company has not within 21 days (or, if there is a statutory time limit of not more than 30 days, within 14 days) thereafter received instructions in writing from the Vendor, in accordance with the preceding provisions of this paragraph 9, to make that appeal.

9.3 Xena shall not be obliged to procure that the Company take any action under

paragraph 9.1 above which involves contesting any matter with any Tax Authority (excluding the authority or body demanding the Tax in question) unless the Vendor furnishes the Company with the written opinion of leading tax counsel to the effect that the appeal in question will, on the balance of probabilities, succeed. Such tax counsel shall be instructed by the Vendor and at the Vendor's expense but the Vendor shall promptly provide Xena with a copy of such instructions and give Xena or its representative a reasonable opportunity to attend any conference with Counsel.

- 9.4 Xena shall not be required to take any action or procure that the Company take any action under this paragraph 9 if it reasonably determines that such action would have a materially adverse effect on the amount of tax payable by Xena and the Group Companies taken as a whole in respect of a period after Completion.

10. Tax Returns

- 10.1 The Vendor or its duly authorised agent shall at the Vendor's sole expense prepare the corporation tax returns of the Company for the accounting period ended on the Accounts Date to the extent that they have not been prepared prior to Completion.
- 10.2 Xena shall procure that the Company shall cause the tax returns mentioned in paragraph 10.1 above to be authorised, signed and submitted to the relevant Tax Authority without amendment or with such amendments as the Vendor shall reasonably agree provided that Xena shall not be obliged to procure that the Company takes any such action as is mentioned in this paragraph 10 in relation to any tax return that is not true and accurate in all material respects.
- 10.3 The Vendor or its duly authorised agent shall at the Vendor's sole expense prepare all documentation and deal with all matters (including correspondence) relating to the tax returns of the Company for all accounting periods ended on or prior to the Accounts Date and the Vendor shall provide Xena with copies of any correspondence relating to such tax returns prior to their submission and copies of any correspondence from the Inland Revenue. The Vendor shall give Xena a reasonable opportunity to comment on such correspondence prior to submission and shall take account of Xena's reasonable comments.
- 10.4 The provisions of paragraph 10.3 shall be without prejudice to the rights of the Company in relation to any audit or any enquiry resulting therefrom and if Xena shall at any time become aware of a Claim for Taxation which may result in a Tax Claim, Xena may at any time thereafter by notice in writing to the Vendor require that the provisions of paragraph 10.3 shall lapse, in which case the provisions of paragraph 9 (Claims Procedure) shall come into operation in accordance with its terms.

Schedule 6

(Escrow Completion requirements)

Part 1

The Vendor shall deliver to XKO at Escrow Completion

- 1 a stock transfer forms, duly completed and executed by the registered holders, in favour of XKO (or as it may direct) in respect of the Shares together with the relevant share certificate (or in the case of any lost certificate or indemnity satisfactory to XKO in relation to it);
- 2 the certificate of incorporation, any certificates of incorporation on change of name or re-registration, the statutory books written up to date, share certificate books, minute books, all unused cheque books and the common seal of the Company,
- 3 all cheque books, credit and charge cards held for the account of the Company;
- 4 all other papers and documents relating to the Company which are in the possession of or under the control of the Vendor;
5. letters of resignation in the agreed form from each of the directors of the Company other than the Vendor and the company secretary of the Company;
6. a statement showing the Bank Balance (as defined in Schedule 9),
- 7 duly executed s431 ITEPA election,
8. those duly executed Restrictive Covenant Agreements entered into by the relevant Managers who have agreed to enter into the same,
9. duly executed Service Agreement, and
10. the Consultancy Agreement duly initialled by the Vendor for identification
- 11 minutes in the agreed form of a duly held meeting of the board of directors of the Company at which, amongst other things.
 - (a) the stock transfer form referred to in (1) is approved and (subject to it being appropriately stamped) registered in that Company's books;
 - (b) the persons nominated by XKO are appointed as directors [and secretary] of that company;
 - (c) the Service Agreement and Consultancy Agreement are approved;
 - (d) the accounting reference date of that company is changed to 31 March;
 - (e) the mandates given by that company to its bankers are revoked or revised as XKO may require; and

- (f) the execution and completion of the other documents to be entered into by that company under this Agreement is approved as appropriate.
12. Stock Transfer Form in favour of the Company transferring all the issued shares in Utilities Billing Management Limited
 13. an orderly marketing agreement between XKO, Robert W. Baird and the Vendor duly executed by the Vendor.
 14. all documents reasonably required to be executed by the Vendor in conjunction with the Financial Assistance Actions,

Part 2

Financial Assistance Actions

1. The entering into by the Company of a Mortgage Debenture in favour of Barclays Bank Plc
2. The entering into by the Company of a Guarantee in favour of Barclays Bank Plc
3. The entering into by the Company of a Deed of Subordination in agreed form
4. The entering into by the Company of an Inter Company Loan Agreement in agreed form.
5. The entering into by the Company of the Second Debenture in agreed form
6. The passing of a special resolution by the Company pursuant to section 155(4) of the Act.
7. The swearing of Form 155(6)(a)
8. The swearing of Form 155(6)(b)
9. The delivery of the necessary auditors reports and Net Asset Statement pursuant to section 156(4) of the Act.
10. Minuted Agreement of the board of the Financial Assistance Whitewash

Schedule 7

(Pre-Completion obligations)

Between the date of this Agreement and Completion the Vendor will procure that (save with the prior written consent of XKO where applicable).

1. reasonable advance notice is given to XKO of meetings of the board of directors of the company (together with an agenda of the business to be transacted at such meetings and all supporting documents) and that a duly authorised representative of XKO is permitted to attend as an observer at all those meetings,
2. the officers, employees and agents of the Company shall, upon the request of XKO, supply to XKO such reasonable information concerning the business of the Company as XKO may reasonably require, and allow representatives of XKO access to the Company's premises, employees and agents for the purpose of obtaining an intimate knowledge of the day to day activities of all aspects of the Company's business or reasonable notice and at reasonable times;
3. the Company shall not, save in the normal course of business.
 - (a) lend any monies,
 - (b) borrow any monies except in relation to the operation of bank overdrafts within existing limits as required in the ordinary course of business;
 - (c) give or allow to exist any further Encumbrance over any of its assets or undertaking,
 - (d) enter into capital expenditure commitments, hire purchase, leasing, rental or conditional sale agreements or arrangements for an aggregate amount in excess of [£15,000],
 - (e) enter into any agreement or arrangement which is outside the ordinary course of its business or which is onerous or long term,
 - (f) declare, make or pay any dividend or other distribution or allot, issue, grant any options over, redeem, purchase, consolidate, convert, sub-divide or reduce any share or loan capital or issue any share warrants or securities convertible into shares,
 - (g) sell, transfer or otherwise dispose of the whole or any part of its business, undertakings or assets,
 - (h) give any financial or other guarantees, securities or indemnities for any purpose;

- (i) commence any litigation or compromise or settle any claim, dispute or other matter in which it is involved which has a claim value in excess of £15,000 but excluding the Surplus Debtors as defined in Schedule 11,
 - (j) change the auditors or the accounting reference date of that Company,
 - (k) terminate or give notice of termination, or seek to vary the terms or conditions of any of the business contracts of the Company with any customer or supplier of the Company,
 - (l) attempt to do any of the matters set out in sub-paragraphs (a) to (k) above;
- 4 no additional directors shall be appointed to the board of directors of the Company;
 - 5. no resolution is passed by the shareholders of the Company,
 - 6. there shall be no change in the terms and conditions of employment of any employee of the Company or of the terms of engagement of any contractor engaged by the Company and no employee's employment with the Company shall be terminated by such company or new employees engaged by such company;
 - 7 the Company maintains in force its Policies,
 - 8. the Company pays its creditors and collects its debtors in the ordinary course of its business or within the normal terms of payment of such creditors or debtors as the case may be, and

Schedule 8

(EBIT Calculation and Preparation of Earn-out Accounts)

- 1 The Earn-out Accounts shall be prepared in accordance with the specific accounting policies set out in paragraph 3 of this Schedule 8 and otherwise on a basis consistent with the Accounts using the same accounting procedures, bases, policies and practices, but subject to the same complying with UK GAAP and all legal requirements. To the extent that the accounting procedures, bases, policies and practices under this clause 1(b) are inconsistent with UK GAAP and all legal requirements, UK GAAP and all legal requirements shall prevail making such adjustments as may be necessary to reflect the fact that the Earn-out Period in question is less than 12 months
- 2 The Earn-out Accounts shall comprise of a profit and loss account and balance sheet and any explanatory notes as are required.
- 3 The Earn-out Accounts shall be prepared on a basis consistent with the preparation of the Accounts but shall take into account the following
 - (a) the rates of depreciation used shall be the rates of depreciation used in the Accounts, as follows

computer equipment	25%	straight line
motor vehicles	25%	straight line
Fixtures and fittings	15%	Straight line
office equipment	20%	Straight line
 - (b) laptop and desktop computers and office furniture with a value below £500 will not be capitalised, unless XKO has agreed that there is a necessity to buy in bulk and such amount is in excess of £5,000, in which case the same will be capitalised,
 - (c) any office refurbishment over £2,500 (at any one time) will be capitalised, but amortisation of such amounts will be over three years,
 - (d) there will be no recognition of work in progress
 - (e) year end accrual in respect of sales will be calculated in the same manner as in the calculation of the Accounts. To the extent permitted by the timeframe of preparing this statement any such accrual will be validated after the end of the relevant financial period. If validation is not possible within the timeframe an accrual will be made consistent with the practice in previous periods and with reference to any other supporting information which will assist in forming a view as to the most reasonable value of the accrual. Recognition of the income during the year and for the purposes of calculating the appropriate accrual that year end, will be as follows,

- (i) Transco overcharges, the date of the invoice when the Transco credit note is recognised in the Transco invoice to the Company customer,
 - (ii) customer under billings and debt collection the date the customer receives the cash,,
 - (iii) cheques received by the Company, the date the cheque is forwarded to the Company's customer; and
 - (iv) client account funds at the date of transfer of funds to the Company's customers;
- (f) a proper provision will be made in respect of debts that are bad or doubtful Without prejudice to the requirement to make proper provision, which might result in a higher level provision, all debts that are over 6 months from date of invoice will be provided for at 50% and all debts over 12 months will be provided in full This excludes the specific issues as at the date of this Agreement and as Disclosed to XKO, with npower and CBS relating to queried invoices,
- (g) immediate provision for credit notes as and when the credit note is issued;
- (h) standard accruals to be made in respect of all payroll, taxes, utilities, rental obligations, company bonuses and all regular or periodic payments, on the same basis as in the Accounts,
- (i) provisioning to be made in respect of Company bonus plans on the following basis.

- (i) in the First Earn Out Period

<u>EBIT Threshold</u>	<u>Bonus Pool</u>
£3,000,000	Nil
£3,750,000	£310,000
£4,750,000	£500,000

- (ii) in the Second Earn Out Period

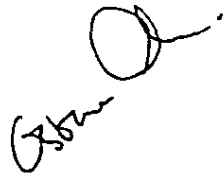
<u>EBIT Threshold</u>	<u>Bonus Pool</u>
£6,500,000	Nil
£8,500,000	£500,000
£10,500,000	£600,000

The bonus pool in all cases to be calculated on a straight line basis as between the various EBIT Thresholds

EBIT Thresholds to be calculated after accruing for the Bonus Pool All amounts of Bonus Pool expressed gross and including amounts of Employer National Insurance Contributions ,

- (j) all costs of employment of a new Finance Director are to be added back to the extent that they exceed £90,000 on an annualised basis,
- (k) after adding back any amount paid by way of Permitted Distribution to the extent that any such amount has reduced EBIT;
- (l) Creditors will be accrued in full (and for these purposes will be verified by a 60 day verification period following the end of the relevant Earn Out Period),
- (m) all non executive director fees (if any) will be added back,
- (n) all expenses relating to the business are to be paid by the Company

- 4 It is acknowledged that the Company shall not be under any obligation to spend all items of expenditure contained in the Budget (except for the bonuses set out in paragraph 3(i)).


Draft 2 – 16 August 2005

**£11,500,000 Variable Rate Secured
Subordinated Loan Notes**

[Note: Maximum of 4,500,000 Series A and 7,000,000 Series B]

Issued by Xena Group plc

Dated • September 2005

Payment in respect of these Notes and the provisions of this Instrument are subject to the terms of a Deed of Subordination made between (inter alia) the Company, UBM Limited, Barclays Bank plc (as Senior Creditor) and Mr R Alvarez on the same date as this Instrument

Osborne Clarke

Apex Plaza
Forbury Road
Reading
RG1 1AX
Telephone +44 (0) 118 925 2000
Facsimile +44 (0) 118 925 2005

JMC/0889919/L783045/TNP

Barcelona
Bristol
Brussels
Cologne
Copenhagen
Frankfurt
Helsinki
London
Madrid
Paris
Rotterdam
St Petersburg
Silicon Valley
Tallinn
Thames Valley



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This Instrument is made on

September 2005

by Xena Group plc (company number: 02950904) whose registered office is at Systems House, Foundry Court, Gogmore Lane, Chertsey, Surrey KT16 9AP ("the Company").

Background:

- (A) The Company has by resolution of its Board of Directors passed on the same date as this Instrument created £11,500,000 Variable Rate Secured Subordinated Loan Notes to be constituted as provided in this Deed.
- (B) The Company entered into the Sale and Purchase Agreement on 1 August 2005 for the sale and purchase of the entire issued share capital of UBM Limited ("UBM").
- (C) The Sale and Purchase Agreement requires the Company to create these Notes (which are to be designated, on issue, as Series A Notes or Series B Notes as the case may be) as deferred consideration payable to the Vendor.

It is agreed and the Company declares as follows:

1. Definitions

- 1.1 In this Instrument, unless the context otherwise requires, the following words have the following meanings:

"Act" means the Companies Act 1985.

"Agreed Rate" means the rate of interest set out in Schedule 2.

"Available Cash" means the cash reserves (being the cash in bank and at hand and the aggregate of any bonds or similar instruments immediately realisable into cash) of UBM from time to time that:

- (a) are not required by UBM for its normal working capital requirements from time to time; and
- (b) are not required by the Company to be paid up by UBM to the Company by way of Permitted Distribution (as defined in the Sale and Purchase Agreement); and
- (c) have not been deposited by way of security in respect of the Guaranteed Loan Notes (as defined in the Sale and Purchase Agreement), and
- (d) UBM and the Company are entitled to apply in respect of repayment of principal and/or interest in respect of these Notes pursuant to the terms of the Subordination Deed.

"Barclays" means Barclays Bank PLC

"Business Day" means a day (other than a Saturday or a Sunday) on which clearing banks are open for business in the City of London

"Certificate" means a certificate in the form or substantially in the form set out in Schedule 1.

"Instrument" means this instrument and the Schedules to it and shall include any instrument supplemental to this instrument and the schedules (if any) to them.

"Issue Date" means the date of issue of the Notes constituted by this Instrument.

"Noteholder" means the person or persons for the time being entered in the Register referred to in clause 12 (Registered holder) as the holder/holders of the Notes.

"Notes" means the Variable Rate Secured Subordinated Loan Notes constituted by this Instrument.

"Register" means the register referred to in clause 11 (Register).

"Repayment Event" means the occurrence of any of the events listed in clause 6 (Repayment Events).

"Sale and Purchase Agreement" means the sale and purchase agreement entered into by the Company and the Vendor on • August 2005 providing for the sale by the Vendor of the entire issued share capital of UBM to the Company on the terms set out therein.

"Security" means together (i) the second debenture (dated the same date as this Instrument) entered into by UBM in favour of the Vendor and (ii) the second charge over the issued share capital of UBM dated the same date as this Instrument entered into by the Company in favour of the Vendor.

"Subordination Deed" means the Deed of Subordination dated the same date as this Instrument between (1) the Company; (2) the Vendor, (3) UBM and (4) Barclays.

"The Vendor" means Mr Robin Alvarez of 9, The Grove, Highgate, London N6 6JU.

1.2 In this Instrument, unless the context otherwise requires:

- (a) words in the singular include the plural and vice versa and words in one gender include any other gender;
- (b) a "person" includes any individual, firm, body corporate, association or partnership, government or state (whether or not having a separate legal personality);
- (c) a reference to a statute or statutory provision includes:
 - (i) any subordinate legislation (as defined in Section 21(1), Interpretation Act 1978) made under it;
 - (ii) any repealed statute or statutory provision which it re-enacts (with or without modification); and

- (iii) any statute or statutory provision which modifies, consolidates, re-enacts or supersedes it; and

2. Amount of Notes and interest

- 2.1 The total principal amount of the Notes is limited to a maximum principal amount of £11,500,000.
- 2.2 Subject to clause 2.6, the Company will in accordance with the terms of this Instrument on any date when the Notes or any part of them become due to be repaid, unconditionally pay to, or to the order, of the Noteholder the amount of Notes becoming due for repayment on that date together in each case with interest accrued at the Agreed Rate plus any arrears of interest (at the Agreed Rate) to the date of repayment.
- 2.3 Subject to clause 2.6, the Company will pay to, or to the order of, the Noteholder interest on the Notes (less any withholding tax in accordance with clause 2.5 below), which shall accrue on a daily basis and on the basis of a year of 365 days from the date of this Instrument and shall be paid quarterly in arrears on the principal amount outstanding of the Notes at the Agreed Rate on the day 10 Business Days after the quarter dates falling on 31 March, 30 June, 30 September and 31 December in respect of the quarter-years ending on these dates in every year, the first such payment in respect of any Notes to be in respect of the period ending on the first quarter date following the issue of the relevant Notes.
- 2.4 Save as required by law, or as specifically permitted in the Sale and Purchase Agreement, all payments whether of principal, interest or such other sums due under this Instrument in relation to the Notes shall be paid in full free of any withholding, deduction, set-off or counterclaim.
- 2.5 If any deduction or withholding is required by law in respect of any interest due to a Noteholder pursuant to or in connection with the Notes the Company shall:
- (a) ensure or procure that the deduction or withholding is made and that it does not exceed the minimum legal requirement for it;
 - (b) pay or procure the payment of the full amount, deduction or withholding to the relevant tax or other authority in accordance with the applicable law; and
 - (c) deliver to the Noteholder within the period for payment permitted by the relevant law a certificate of deduction or equivalent of the relevant deduction or withholding.
- 2.6 Payments of principal and interest (including any prepayments under clause 5.2) in respect of these Notes may only be made if permitted by the terms of the Subordination Deed. In addition, changes may only be made to the provisions of these Notes and/or the Note Instrument to the extent permitted by the Subordination Deed. No transfer may be made of any Notes (i) without the written consent of the Company and Barclays and (ii) unless the person to whom the Notes are transferred is, or becomes, a party to the Subordination Deed.

3. Issue

The Notes will be issued at par in accordance with the Sale and Purchase Agreement, and upon such issue the Notes will be designated as Series A or Series B Notes as the case may be.

4. Certificates

The Notes shall be in registered form represented by a Certificate and the Noteholder shall be entitled to a Certificate representing the Notes held by him. The Certificate shall be executed as a deed by the Company. The Company shall comply with the terms of this Instrument and the Notes shall be held subject to and with the benefit of the provisions contained in this Instrument which shall be binding on the Company and the Noteholder and all persons claiming through or under either of them.

5. Repayment

- 5.1 Save as otherwise provided in this Instrument and subject to the terms of the Subordination Deed, the Company shall repay the Notes by instalments as set out below plus any arrears or accruals of interest due on those dates:

Date	Amount
15 July 2008	one sixth of the Notes outstanding
15 October 2008	one fifth of the Notes outstanding
15 January 2009	one quarter of the Notes outstanding
15 April 2009	one third of the Notes outstanding
15 July 2009	one half of the Notes outstanding
15 October 2009	all the remaining Notes

In the event that any such date for repayment is not a Business Day, the date for repayment of the relevant Notes shall be deemed to be the next following Business Day.

- 5.2 Subject to clause 2.6, the Company shall be entitled to repay any Notes not previously repaid in accordance with sub-clause 5.1 in multiples of £100,000, together with any arrears or accruals of the interest due on the Notes repaid at the Agreed Rate, on or at any time following the Issue Date on giving to the Noteholder not less than 5 days' prior written notice. The Notes specified in such notice of repayment shall become due and immediately repayable as a debt of the Company on the date specified for repayment in the notice. Any such early repayment may be made subject to a discount on the principal amount of any Notes so redeemed equal to the Base Rate of Barclays per annum as at the date of which notice is served plus 1.75 per cent. Any such early repayment shall be deemed to be a repayment of the Notes next due for repayment hereunder, and the amount to be repaid on the next subsequent repayment date shall be reduced accordingly

5.3 All Notes repaid by the Company shall be cancelled and shall not be available for re-issue. Any repayment of Notes shall be a repayment of Series A Loan Notes (until such time as all the Series A Loan Notes have been repaid in full) and shall thereafter be a repayment of Series B Loan Notes.

5.4 All principal monies and interest payable in respect of the Notes shall be payable as the Noteholder may direct or failing such direction to the Noteholder at the Noteholder's last known address.

5.5 The obligations of the Company under this Instrument shall end immediately after all of the Notes and any interest due in respect of the Notes are repaid in accordance with the terms of this Instrument, save that such repayment shall not release the Company from any liability which at the time of such repayment has already accrued in respect of any act or omission prior to such repayment, in each case subject to the terms of the Subordination Deed and the further provisions of clause 10 (Limited Recourse).

6. Repayment Events

If any of the following events occur before the Notes (together with arrears or accruals of interest) have been repaid the Noteholder may by notice in writing to the Company require that the Notes shall be forthwith repaid at par together with arrears or accruals of interest: *[NB: the Company's default under the Barclays Facility has not been included – this should only be relevant where enforcement proceedings have been taken or where (a) or (b) apply]*

- (a) the Company fails to repay any of the Notes within 5 Business Days of their due date;
- (b) the Company fails to pay interest payments due in respect of the Notes by the due date;
- (c) an order is made or a resolution passed for the winding-up (save for the purposes of amalgamation or reconstruction) of the Company or UBM;
- (d) UBM (whether by virtue of a sale of its assets or undertaking or for any other reason) ceases to carry on business;
- (e) an administrative or other receiver or a manager on behalf of a debenture holder or other encumbrancer is appointed in relation to the Company or UBM;
- (f) any encumbrancer takes possession of any property of the Company or UBM,
- (g) an administration order is made in relation to the Company or UBM.

7 Delivery of Certificate

Upon receipt of any repayment under this Instrument the Noteholder shall send or deliver his Certificate for the Notes to the Company. When the whole of the Notes have been repaid in accordance with this Instrument the Company shall cancel the Certificate. On any partial repayment (other than a partial repayment whereby the outstanding balance of the Notes is repaid) the Company shall endorse the Certificate

to record the part of the Notes then repaid and shall return the Certificate to the Noteholder within one month of the partial redemption

8. Default interest

If payment of any interest is not made within 14 days of it becoming due and payable, interest shall accrue on that interest at 4 per cent above the Agreed Rate from the date upon which it becomes due and payable to the date of actual payment.

9. Subordination and security

9.1 The Notes will be subject to the terms of the Subordination Deed.

9.2 The Notes are secured subject to the terms of (i) the Security and (ii) the Subordination Deed.

10. Limited Recourse

10.1 The rights of recourse of the Noteholder in respect of any sums due in respect of these Notes shall be limited as further set out in this paragraph 10 and the Subordination Deed.

10.2 Save as otherwise agreed in writing with the Company, the Noteholder shall not be entitled to take any action to enforce any repayment obligation of the Company of any amount due hereunder until the date 6 months following the date on which the Company has made default in the payment of any sums due in respect of the Notes (the "Enforcement Date"), and any action shall then be limited to amounts which such sums remain unpaid as at the Enforcement Date and accrued interest on such sum to the date of payment.

10.3 Without prejudice to the provisions of paragraph 10.4 the liability from time to time of the Company in respect of any demand for repayment of any principal sum or interest due in respect of the Notes shall be limited to an amount equal to the Available Cash and to the extent that Available Cash is not sufficient to meet such demand, the Noteholder will only be entitled to recover pursuant to the Security and subject to the Subordination Deed.

10.4 Notwithstanding the provisions of paragraph 10.3, the Noteholder shall, with effect from the Enforcement Date and subject at all times to the Subordination Deed, be entitled to take such action as it shall see fit under the Security in order to recover all amounts due to the Noteholder in respect of the Notes.

11. Register

A register of the Notes (the "Register") will be kept by the Company and there shall be entered in the Register within 24 hours of issue of the Notes:

- (a) the name and address of the holder for the time being of the Notes;
- (b) the nominal amount of the Notes held by that holder; and

- (c) the date at which the name of the registered holder is entered in respect of the Notes standing in his name.

Any change of name or address of the Noteholder shall forthwith be notified to the Company and thereupon the Register shall be altered accordingly but failure to notify shall not affect the right of the Noteholder to repayment of the Notes and payment of interest in accordance with the terms of this Instrument.

12. Registered holder

The Company will recognise the registered holder of the Notes as the absolute owner of them and will not be bound to take notice of or to see to the execution of any trust, whether express, implied or constructive, to which the Notes may be subject and the receipt of such holder for the monies payable upon the redemption or repayment of them shall be a good discharge to the Company notwithstanding any notice it may have, whether express or otherwise, of the right, title, interest or claim of any other person to or in these Notes or monies. No notice of any trust, express, implied or constructive, shall (except as by statute provided or as required by an order of a court of competent jurisdiction) be entered on the Register in respect of any Notes.

13. Transferability

No transfer of the Notes may be made unless (i) the person to whom the Notes are transferred is or becomes a party to the Subordination Deed and (ii) the written consent of the Company and Barclays is obtained prior to any such transfer becoming effective.

14. Replacement of Certificates

If any Certificate issued pursuant to this Instrument be worn out or defaced then upon its production to the directors of the Company they may cancel it and may issue a new Certificate in lieu of it and if any Certificate be lost or destroyed then upon proof of this to the satisfaction of the directors of the Company or in default of proof on such indemnity as the directors of the Company may deem adequate being given, a new Certificate in lieu of it may be given to the person entitled to such lost or destroyed Certificate. An entry as to the issue of the new Certificate and indemnity (if any) shall be made in the Register.

15. Variation

No variation of this Instrument shall be permitted without the consent in writing of the Noteholder and Barclays.

16. Governing law

This Instrument shall be governed by, and construed in accordance with, the laws of England and Wales

This Instrument has been executed as a deed and has been delivered on the date appearing at the head of page 1.

Schedule 1

(the "Certificate")

Xena Group plc

(Registered in England. Company number: 02950904)

Issue of up to £11,500,000 Variable Rate Secured Subordinated Loan Notes

Issued pursuant to a resolution of the Board of Directors

passed on • September 2005

This is to certify that •

of •

is the registered holder of £• nominal of Series • of the above mentioned Variable Rate Secured Subordinated Loan Notes which are constituted by an Instrument entered into by the Company on and dated • September 2005 and are issued subject to the provisions contained in that Instrument and the Subordination Deed.

This Deed is executed on the date below.

Dated 200

**Executed as a Deed
by Xena Group plc
acting by:**

)

)

Director

Director/Secretary

Schedule 2
(the "Agreed Rate")

The rate which is 1.75 per cent over the Base Rate per annum from time to time of Lloyds TSB Bank plc.

Executed as a Deed (but not
delivered until the date
appearing at the head of
page 1) by Xena Group plc
acting by:

)
)
)
)
)

Director

Director/Secretary

GA

Draft 2 - 16 August 2005

12

**£6,000,000 Variable Rate Guaranteed Loan
Notes**

Issued by Xena Group plc

Dated • September 2005

Osborne Clarke

Apex Plaza
Forbury Road
Reading
RG1 1AX
Telephone +44 (0) 118 925 2000
Facsimile +44 (0) 118 925 2005

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Brussels
Cologne
Copenhagen
Frankfurt
Helsinki
London
Madrid
Paris
Rotterdam
St Petersburg
Silicon Valley
Tallinn
Thames Valley

4

THIS INSTRUMENT is made the day of September 2005

BY

XKO Group Plc (registered in England and Wales with company number: 02950904) whose registered office is at Systems House, Foundry Court, Gogmore Lane, Chertsey, Surrey KT16 9AP (the "Company").

RECITALS:

- A. The Company entered into an agreement on [] August 2005 to purchase of the whole of the issued share capital of UBM Limited from Robin Alvarez (the "Share Sale Agreement").
- B. The Share Sale Agreement requires the Company to create Loan Notes (which are to be designated, on issue, as Series "A" Guaranteed Loan Notes and Series "B" Guaranteed Loan Notes (as the case may be), as deferred consideration payable to Robin Alvarez. The Series "A" and Series "B" Guaranteed Loan Notes shall be unsecured. The Company has by a resolution of its board of directors passed on • 2005 created up to £6,000,000 Loan Notes and determined to constitute them in the following manner. 12

NOW THIS DEED WITNESSES as follows:

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Instrument (which includes the schedules) the following definitions shall apply unless the context requires otherwise:

Articles	means the articles of association from time to time of the Company;
Business day	means any day (except Saturdays and Sundays) when clearing banks are open for business in England;
Certificates	means the certificates in respect of Notes;
Conditions	means the conditions referred to in Clause 2 and set out in Schedule 1;
Default Interest	means the rate of interest payable if any repayment of any Note

is not made on the Redemption Date or when due being 40.5 per cent per annum [NB: to be agreed] above the base rate from time to time of Lloyds Bank Plc, such rate to apply both before and after any judgment;

Directors	means the board of directors of the Company from time to time, or a duly authorised committee of the board;
Extraordinary Resolution	means a resolution in writing signed by Noteholders holding at least 75 per cent of the Notes outstanding from time to time;
Interest Period	means, in respect of any Note, the period from the date of issue of such Note to the following 31 March and thereafter from 1 April in each year to the following 31 March or the date on which it is redeemed or cancelled whichever is the earlier.
Notes	means the principal amount of Loan Notes of the Company constituted by this Instrument, and references to any Notes as "outstanding" mean that they are in issue, unredeemed and un-cancelled and "unredeemed" means that either the Note or any Default Interest accrued thereon remains unpaid;
Noteholders	means persons from time to time entered in the Register as the holders of the Notes, and any references to a holder's Notes mean Notes in respect of which he is so registered;
Redemption Date	means the date for redemption set out in Clause 3.1;
Redemption Notice	means a notice substantially in the form set out in Schedule 1 (or, in the event that such notice is given by the Company, a notice in writing given by the Company to Noteholders to like effect ; and
Register	means the register of the Notes (provisions relating to which are set out in Schedule 2)

1.2 Any phrase introduced by the terms including, include or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.3 References to persons shall include natural persons, bodies corporate, unincorporated associations, partnerships and other entities; references to the singular shall include the plural, and vice versa, and references to clauses and schedules are (unless expressly stated otherwise) to clauses of, and schedules to, this Instrument

1 4 Headings are for convenience only and are not to affect interpretation.

2. CONSTITUTION OF THE NOTES

12

2.1 The principal amount of the Notes constituted by this Instrument is limited to a maximum principal amount of £6,000,000. The Notes may be issued in denominations of any amount and shall, upon any such issue, be designated Series "A" Guaranteed Loan Notes and/or Series "B" Guaranteed Loan Notes as the case may be.

2.2 This Instrument shall operate for the benefit of all Noteholders, each of whom may sue for the performance or observance of its provisions in his own right so far as his holding of Notes is concerned, and for all persons claiming through or under them. The Company shall comply with the terms of the Notes and the Conditions and the Notes shall be held subject to the Conditions. The Conditions and schedules shall be deemed to be incorporated in this Instrument and shall be binding on the Company and the Noteholders and all persons claiming through or under them.

2.3 The Notes will be issued at par in accordance with the Share Sale Agreement and upon such issue the Notes will be designated as Series "A" Guaranteed Loan Notes or Series "B" Guaranteed Loan Notes as the case may be

2.4 No application shall be made to any investment exchange (whether in Great Britain or elsewhere) for permission to deal in or for an official or other listing or quotation in respect of the Notes.

3. REDEMPTION OF NOTES

3.1 Any of the Notes not previously repaid or repurchased by the Company shall subject to the Conditions be repaid at par, together with any accrued interest (less any applicable taxes), on the date that is ten Business Days after the date on which a Redemption Notice is given. Subject to Clause 3 2 below, no Redemption Notice may be given before the date that is 12 months after the date of issue of the Certificates in respect of those Notes.

3.2 Notwithstanding any other provisions of this Instrument, each Noteholder will be entitled to demand immediate redemption of his outstanding Notes at par together

with any Default Interest (less any applicable taxes) on them in any of the following events:

- 3.2.1 the Company fails to pay when due any principal payable on repayment or any interest payable at the end of any interest period of any of his Notes;
or
- 3.2.2 the Company is in default under its financing arrangements with Barclays Bank plc; or
- 3.2.3 the Company makes default for more than 21 days (after notification to the Company of any such default has been received from any Noteholder) in the performance or observance of or compliance with any of its other undertakings contained in this Instrument; or
- 3.2.4 an order is made or an effective resolution is passed for the winding-up of the Company (other than a solvent winding-up for the purposes of amalgamation or reconstruction), or the Company stops or threatens to stop payment of its debts, or the Company ceases or threatens to cease to carry on its business; or
- 3.2.5 an administrator of the Company is appointed or documents are filed with the Court for the appointment of an administrator or notice is given of an intention to appoint an administrator by the Company or the directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 of the Insolvency Act 1986); or
- 3.2.6 a receiver or administrative receiver or similar official is appointed in respect of the whole or a substantial part of the undertaking and assets of the Company; or
- 3.2.7 any distress or execution (or other similar process) is levied upon or enforced against all or a substantial part of the assets or property of the Company and is not fully paid out or discharged within 90 days; or
- 3.2.8 any process or event with an effect analogous to any of those referred to in Clauses 3.2(c) to 3.2(f) (inclusive) happens to the Company in a

jurisdiction outside England and Wales

provided that a written demand specifying the event is received by the Company while the event is continuing.

- 3.3 All Notes repaid or purchased pursuant to any of the provisions of this Instrument shall be automatically and immediately cancelled and shall not be re-issued. In addition, the Company may, by agreement with any Noteholder, cancel any Loan Notes in order to satisfy any obligation due from such Noteholder to the Company pursuant to the terms of the Sale and Purchase Agreement and as contemplated thereby.

4. CERTIFICATES

The Certificates shall be issued under the Seal of the Company (or executed by the Company in any other manner authorised by the Companies Act 1985) and shall be in the form or substantially the form set out in Schedule 1. Each Certificate shall refer to this Instrument and bear a denoting number and have the Conditions endorsed on it or attached to it, together with a form of Redemption Notice in the form (or substantially in the form) set out in that Schedule.

5. THIS INSTRUMENT

- 5.1 The Company may from time to time (by deed expressed to be supplemental to this Instrument) amend any provisions of this Instrument (including the Conditions) if the amendment is previously sanctioned by the Noteholders in writing.
- 5.2 The Company will at all times allow any holder of outstanding Notes to inspect a copy of this Instrument during normal business hours on reasonable notice and (provided the Company's reasonable expenses in doing so are paid) will on request supply any Noteholder as soon as reasonably practicable with a copy of this Instrument

6. GUARANTEE

Amounts payable to Noteholders in respect of each series of the Notes (issued and to be issued) are secured by guarantees by Lloyds Bank Plc in the form or substantially

in the form set out in Schedule 3.

7. THIRD PARTY RIGHTS

Nothing in this Instrument is intended to confer on any person any right to enforce any term of this Instrument which that person would not have but for the Contracts (Rights of Third Parties) Act 1999.

8. GOVERNING LAW AND JURISDICTION

8.1 This Instrument and the Notes shall be governed by and construed in accordance with the laws of England.

8.2 The courts of England shall have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Instrument. Accordingly any proceedings relating to or in connection with this Instrument or the Notes may be brought in such courts.

IN WITNESS of which the Company has signed this Instrument as a deed and has delivered it upon dating it.

SCHEDULE 1

CERTIFICATE

No.: [NUMBER]	Redemption Date: [DATE]
---------------	-------------------------

XKO Group Plc (the "Company")

**ISSUE OF UP TO £6,000,000 SERIES [] VARIABLE RATE GUARANTEED LOAN
NOTES**

Issued pursuant to the memorandum and articles of association of the Company and created by a resolution of the board of directors passed on [] 2005

THIS IS TO CERTIFY THAT [Name Of Noteholder] is/are the registered holder(s) of £[] of the above-mentioned Loan Notes constituted by an Instrument dated [Completion Date] 200[6][7] (the "Instrument"). Such Notes are issued with the benefit of and subject to the provisions contained in the Instrument and the conditions endorsed on this Certificate.

[Issued/Dated] this day of 200[6][7].

EXECUTED as a deed by
XKO GROUP PLC
acting by a director and its secretary
or two directors - insert full names stating
whether the person concerned is a director
or secretary

[signature] director

[signature] secretary/director

Please note:

The Notes are not transferable and are repayable in whole or in part in accordance with the terms of the Instrument..

This Certificate (including the Conditions endorsed on it) uses terms in the sense in which they are defined in the Instrument

SERIES []

REDEMPTION NOTICE: NOTICE OF EXERCISE OF REDEMPTION RIGHTS

To: The directors of XKO Group Plc

I/We, the registered holder(s) of the Notes represented by this Certificate, give notice of my/our desire to exercise my/our right to require repayment by the Company of the whole/£* of the principal amount of such Notes in accordance with the Conditions, together with accrued interest if any (less any applicable taxes), on the Redemption Date.

I/We authorise the despatch of a cheque payable in my/our favour in respect of the principal monies and any interest (including, without limitation, Default Interest) if any due to me/us.

Signature(s) of Noteholder(s)

.....

.....

In the case of joint holdings all Noteholders must sign. In the case of a corporation this form must either be under the common seal or under the hand of some officer or attorney of the corporation duly authorised in that behalf.

Dated _____

*Delete or complete as appropriate. If this space is left blank the notice will be treated as a request for repayment of the whole of the principal amount of Notes represented by this Certificate.

THE CONDITIONS

1. INTEREST

- 1.1 The Notes shall carry interest at the rate defined in 1.2 below for the Interest Period in respect of the Notes such interest to be paid in arrears on the Redemption Date or the date on which such Loan Note is cancelled as the case may be.
- 1.2 Interest on the Notes shall accrue daily and be calculated on the basis of a 365 day year by reference to the number of days in the Interest Period and will be payable at the rate per annum which is determined by the Company to be ~~{+}2%~~ below ~~{NB: to~~ be agreed the published base rate of Lloyds Bank Plc from time to time. Interest shall be due and payable by the Company on the first Business Day after the end of each Interest Period.
- 1.3 In the event of default, until the Notes are repaid in full in accordance with the provisions of the Instrument or these Conditions, the Company will pay to the Noteholders appearing on the Register on the last day of each calendar month or sooner if demanded Default Interest (less any applicable taxes) on the principal amount of the Notes in arrears such Default Interest shall accrue from day to day and shall be calculated on the basis of a 365-day year compounded three monthly until the Notes in arrears are redeemed in full.

2. REDEMPTION

- 2.1 No Note shall be issued with a Redemption Date that is less than 12 months from the date of issue of such Notes.
- 2.2 Unless previously purchased or redeemed or cancelled the Notes will be repaid at par on the Redemption Date.
- 2.3 The Company may at any time purchase the Notes by private treaty, by tender (available to all Noteholders alike) or by any other means at any price.
- 2.4 All Notes redeemed or purchased by the Company in accordance with the Conditions shall be cancelled and the Company shall not be at liberty to keep them subsisting for the purposes of re-issue or to re-issue them or to issue any other Notes in their place.

- 2.5 The Company shall not be obliged to make any payment to any Noteholder by way of redemption of his Notes except insofar as it receives his Certificate(s) (or, if lost, an indemnity in a form reasonably acceptable to the Company) together with the Redemption Notice duly completed. If any Noteholder shall fail or refuse to deliver up the Certificate for his Notes to the Company at its registered office at the time for their redemption or shall fail or refuse to accept payment of the redemption moneys or any accrued interest payable in respect of them the moneys payable to such Noteholder shall be set aside by the Company and paid to the Vendor's Solicitors (as defined in the Sale and Purchase Agreement) whose receipt in respect of the same shall be a valid discharge for the obligations of the Company in respect of which such payment is made. If such and the Company shall by doing so be discharged from all further obligations in connection with such Notes. If the moneys are subsequently placed on deposit at a bank the Company shall not be responsible for the safe custody of such moneys or for interest on them..

3. PAYMENTS

- 3.1 All principal monies and interest payable in respect of the Notes shall be payable as the Noteholder may direct or failing such direction to the Noteholder at the Noteholder's last known address. ~~Payment of principal and/or interest payable on the Notes shall be by telegraphic transfer to the client account of the Vendor's Solicitors (as defined in the Share Sale Agreement) at • ple, account number •, sort code • [details needed]. The Noteholders hereby irrevocably authorise the Vendor's Solicitors to receive all sums due to them under this Agreement and receipt of the Vendor's Solicitors of such sums will constitute full and valid discharge of the Company.~~

- 3.2 Whenever any payment (including interest) due on any Note shall become due on a day which is not a Business Day, payment shall be made on the next succeeding Business Day but (in the case of interest) no adjustment shall be made to the amount of interest payable or to the relevant Interest Period and the Noteholder shall not be entitled to any other payment in respect of any such delay.

4. MISCELLANEOUS

- 4.1 So long as the Notes remain in issue the Company shall send to each Noteholder a

copy of every notice, circular, accounts or other document required by law to be sent by the Company generally to the holders of its ordinary share capital at the same time as they are sent to such shareholders

- 4.2 Any amounts unclaimed, set aside or retained in accordance with these Conditions in respect of any Note may (without constituting the Company a trustee in relation to them) be deposited or invested by the Company as the Directors see fit until they are validly claimed (the claimant having provided the Company with such evidence of his entitlement as the Directors may require) and, if not so claimed within 12 years of first falling due for payment by the Company, shall then belong to the Company to the exclusion of all further claims by, under or through any Noteholder.

SCHEDULE 2

THE REGISTER

1. REGISTER

- 1.1 The Company will keep the Register at its registered office or (subject to the provisions of section 190 Companies Act 1985) at the offices of the Registrar of the Company in one or more books and enter in the Register:

- 1.1.1 The names and addresses of the Noteholders to whom the Notes are issued;
- 1.1.2 The amount of the Notes held by every registered holder and the principal moneys paid up on them.
- 1.1.3 The first date or dates of issue of the Notes and the date on which the name of every such registered holder is entered in respect of the Notes standing in his name.
- 1.1.4 The serial number of each Certificate issued and the date of its issue

Any change of name or address on the part of any Noteholder shall immediately be notified to the Company and on receipt the Register shall be altered accordingly. The Noteholders or any of them and any person authorised in writing by any of them shall be at liberty at all reasonable times during office hours to inspect the Register and to take copies of it or of extracts from it. The Register may nevertheless be closed by the Company for such periods and at such times as the Company may think fit, provided that it is not closed for more than 30 days in any one year.

- 1.2 The Company will recognise the registered holder of any Notes as the absolute owner of them and shall not be bound to take notice or see to the execution of any trust (whether express, implied or constructive) to which any Note may be subject. The receipt of the registered holder for the time being of any Notes or (in the case of joint registered holders) the receipt of any of them for the interest from time to time accruing due in respect of the Notes or for any other moneys payable in respect of them shall be a good discharge to the Company notwithstanding any notice it may have (whether express or otherwise) of the right, title, interest or claim of any other person to or in such Notes, interest or moneys. No notice of any trust (express,

implied or constructive) shall be entered on the Register in respect of any Notes.

2. TRANSFERS AND TRANSMISSION

2.1 The Notes will only be freely transferable in whole or in part by the Noteholder.

2.2 Subject to 2.4 below the executors or administrators of a deceased registered holder of Notes (not being one of several joint holders) and, in the case of the death of one or more of several joint holders, the survivor or survivors of them, shall be recognised by the Company as having any title to such Notes.

2.3 Subject to 2.4 below any person becoming entitled to Notes in consequence of the death or bankruptcy of the holder of such Notes may, upon producing such evidence of his capacity or of his title as the Company shall think sufficient, be registered himself as the holder of such Notes.

2.4 A person may only become entitled to Notes pursuant to 2.2 and 2.3 above to the extent that such person acknowledges (in form reasonably satisfactory to the Company) that such Notes may be cancelled under certain circumstances as contemplated in the Sale and Purchase Agreement, in satisfaction of liabilities arising in respect of certain obligations or claims under the Sale and Purchase Agreement.

2.5 No fee will be charged by the Company in respect of the registration of any instrument of transfer or other document relating to or affecting the title to any Notes or otherwise for making any entry in the Register affecting title to any Notes.

3. NOTICES

3.1 Any notice may be given to any Noteholder by sending it by first class post in a pre-paid letter addressed to such Noteholder at his registered address. In the case of joint holders of any Notes a notice given to the Noteholder whose name stands first on the Register in respect of such Notes shall be sufficient notice to all the joint holders.

3.2 Any notice given by post shall be deemed to have been served on the day following the day on which it was posted and in proving such service it shall be sufficient to prove that the envelope containing the notice was properly addressed, stamped and posted

- 3.3 A person entitled to any Notes in consequence of the transfer of the Notes or the death or bankruptcy of a Noteholder or otherwise by operation of law shall be entitled, upon producing to the Company such evidence as the Company may reasonably require to show his title to the Notes, and upon giving the Company an address within the United Kingdom for the service of notices, to have served upon or delivered to him at such address any notice or document to which the Noteholder would have been entitled, and such service or delivery shall for all purposes be deemed a sufficient service or delivery of such notice or document on all persons interested (whether jointly with or as claiming through or under him) in such Notes. Otherwise, any notice or document delivered or sent by post to or left at the address of any Noteholder in pursuance of these provisions shall, notwithstanding that such Noteholder be then dead or bankrupt or in liquidation, and whether or not the Company shall have notice of his death or bankruptcy or liquidation, be deemed to have been duly served or delivered in respect of any Notes registered in the name of such Noteholder as sole or first-named joint holder.

4. **REPLACEMENT OF CERTIFICATES**

Should any Certificate be lost, stolen, mutilated, defaced or destroyed, it may be replaced at the registered office of the Company upon payment by the claimant of the Company's expenses in connection with replacing it and on such terms as to evidence, indemnity, security or otherwise as the Company may reasonably require. Mutilated or defaced Certificates must be surrendered before replacements will be issued.

SCHEDULE 3

FORM OF GUARANTEE

[Lloyds Bank Plc to provide]

Qb A.

EXAMPLE LOAN NOTE GUARANTEE

WHEREAS

- (A) In accordance with a share purchase agreement dated [] August 2005 and pursuant to an instrument dated [] 200[6][7] (the "Instrument") [Xena] Group Plc (the "Purchaser") has agreed to issue to Robin Alvarez (the "Vendor") Redeemable Loan Notes in an aggregate amount of £1 (the "Notes") as part of the consideration for the purchase by the Purchaser of the issued shares of UBM Limited.
- (B) In consideration of the Vendor having agreed to accept the Notes as part consideration, Lloyds TSB Bank plc (the "Guarantor") has agreed at the request of the Purchaser and on the terms and conditions hereinafter appearing to guarantee the payment of the principal amount and interest of the Notes to the holders thereof for the time being (the "Noteholders")

To: The Noteholders

In consideration of the Vendor agreeing to accept the Notes as part consideration for the sale by him of the issued shares of UBM Limited to the Purchaser, the Guarantor hereby unconditionally and irrevocably guarantees the payment of the principal amount and interest of the Notes and subject as hereinafter provided, hereby undertakes to pay the same to the Noteholders on demand PROVIDED THAT

The maximum aggregate amount of the Guarantor's liability hereunder shall in no event exceed _____ pounds (£[] ([] words)

Any demand on the Guarantor hereunder must be made through a firm of solicitors (the signatures of such firm being authenticated by their bankers), must state that the person(s) making the claim is/are the registered holder(s) of the relevant Note(s) which relates to a holding of Note(s) originally issued on [] 200[6][7] and must be accompanied by the relevant Note(s) and the written declaration of the claimant(s) stating that the amount claimed is due by reason of the Purchaser having failed to fulfil its obligation to pay the same in accordance with the provisions of the Notes; any demand complying with the above conditions shall be conclusive evidence to the Guarantor that the amount claimed is due hereunder

Any demand under this guarantee must be served upon the Guarantor at _____, by no later than [...] days following the date on which the amount demanded was due for payment under the Notes and shall be effective upon receipt by the Guarantor

4. This guarantee, and the Guarantor's liability hereunder, shall automatically determine on [] August 2010 save as regards any demand made hereunder complying with all the terms hereof and received by the Guarantor as herein provided not later than close of business upon such date.
5. For the avoidance of doubt amounts due hereunder will be paid without reference to any rights of set off or counterclaim that the Purchaser or The Guarantor has against the relevant Noteholder or any rights of set off which the Guarantor may have against the Purchaser and whether or not the Purchaser disputes the truth or accuracy of any statement given pursuant to Clause 2 above.

The Guarantor's liability hereunder shall not be discharged, varied or impaired by

1. any amendment to or variation of the terms of the Notes; or
2. any other action, event, neglect or omission which would or might but for this clause operate to discharge, vary or impair the Guarantor's liability hereunder

Subject as herein otherwise expressly provided, this guarantee shall be an irrevocable continuing guarantee

The Guarantor shall not be liable to pay any interest under this guarantee

For the avoidance of doubt, it is not intended that any of the terms of this guarantee should be enforceable by any person other than a Noteholder by virtue of the Contracts (Rights of Third Parties) Act 1999.

This guarantee shall be governed and construed in accordance with English law and the forum for any action in shall be the courts of England

Dated:

Executed as a Deed and delivered by
as attorney for Lloyds TSB Bank plc
in the presence of

ky

R/CMAR/AHML1506
wsEE
DRD 1994

SIGNED as a DEED)
for and on behalf of)
XKO GROUP PLC)
acting by a director and its secretary or two directors:)

Signature: Director

Name:
(Block capitals)

Signature: Director/Secretary

Name:
(Block capitals)

Schedule 11
(Working Capital Excess/Shortfall)

Part 1

1. Definitions

1.1 The following definitions shall apply to this Schedule 11 unless the context requires otherwise

"Cash" means cash in hand of the Company and in the Company's bank account as at close of business on the date of Completion less the amount of any cheques written by the Company as at close of business on such date but remaining uncleared plus the amount of any lodgements that remain uncleared (which, for the avoidance of doubt, shall exclude any cash held in the Company's customer client accounts)

"Completion Creditors" means the Company's trade creditors at the date of Completion (which are less than 20 days old) and which, for the avoidance of doubt, exclude any trade creditor to the extent that such creditors invoice is under bona fide query by the Company at the date of Completion

"Completion Debtors" means the Company's trade debtors as at close of business on the date of Completion (which for the avoidance of doubt shall exclude any Surplus Debtors and debtor invoices that have been provided for by the Company as bad or doubtful).

"Payment Date" means the first business day following the date which is 3 months from Completion.

"Surplus Debtors" means those debts set out in Part 3 of this Schedule

"Surplus Debtor Receivables" means any amounts owing to the Company by any of the Surplus Debtors as set out in Part 3.

"Working Capital Cash Value" means the aggregate sum of

(a) £100,000, plus

(b) an amount equal to:

(i) the Company's accrued payroll as at close of business on the date of Completion (where the date of Completion is on or after 5 September 2005) (but, for the avoidance of doubt, where Completion is prior to 5 September 2005, there shall be no accrual made in respect of payroll);
plus

- (ii) the Company's accrued corporation tax, PAYE and value added tax calculated up to close of business on the date of Completion, **plus**
- (iii) the amounts payable by the Company (including PAYE amounts) in respect of the Management Bonuses payable on 14 days from Completion ; **plus**
- (iv) any national insurance contributions payable by the Company at Completion in respect of the Management Bonuses]

"Working Capital Statement" means the statement prepared by the Vendor showing Working Capital Cash Value, Completion Creditors and Completion Debtors

2 Working Capital Adjustment

2 1 If following the agreement or determination of the Working Capital Statement in accordance with this Schedule 11

- (a) the Completion Debtors is an amount which is less than £1,200,000 (such shortfall being defined as **"the Completion Debtor Shortfall"**), and/or
- (b) the Completion Creditors is an amount which is greater than £50,000 (such amount being defined as **"the Completion Creditor Excess"**), and/or
- (c) the amount of Cash is an amount which is less than the Working Capital Cash Value (such amount being defined as **"the Working Capital Cash Shortfall"**),

the Vendor shall, on the Payment Date pay an amount in cash equal to the Completion Debtor Shortfall (if any), plus the Completion Creditor Excess (if any) plus the Working Capital Cash Shortfall (if any) to XKO by telegraphic transfer to such account as XKO may direct.

2 2 If following the agreement or determination of the Working Capital Statement in accordance with this Schedule 11 the amount of Cash is an amount which is greater than the Working Capital Cash Value (such amount being defined as **"the Working Capital Cash Excess"**), XKO shall, on the Payment Date, pay to the Vendor an amount in cash equal to the Working Capital Cash Excess by telegraphic transfer to such account as the Vendor may direct

2 3 If on or prior to the date which is 3 months from Completion, the Company has received amounts in cleared funds in respect of Surplus Debtor Receivables (in aggregate **"the Received Amounts"**), then XKO shall on the Payment Date pay to the Vendor an amount in cash equal to the Received Amounts. Such payment shall be made by telegraphic transfer to such account as the Vendor may direct.

3 Any amounts:

- (a) payable to XKO pursuant to clause 2 1 shall be treated as an reduction of the Consideration, and

- (b) any amounts payable to the Vendor pursuant to clauses 2.2 or 2.3 shall be treated as an increase in the Consideration

Part 2

(Preparation)

- 1 Within 1 month from Completion, the Vendor will procure that the Company prepares and delivers to the Vendor a draft statement of the Working Capital Cash Value, Completion Debtors and Completion Creditors (such statement being the "**draft Working Capital Statement**")
2. In order to enable XKO to review the draft Working Capital Statement, the Vendor shall:
 - (a) give XKO and its accountants and other advisers or representatives reviewing the draft Working Capital Statement full access to its working papers and to use all reasonable efforts to provide promptly upon request such information and explanations as they may request during the course of their review of the draft Working Capital Statement,
 - (b) give XKO all reasonable access at all reasonable times and without delay to the books, records and working papers in the possession or control of the Vendor and/or his advisers relating to the Company and to all its staff and shall permit XKO to take copies of such books, records and working papers, and
 - (c) generally provide XKO with such other information and assistance that it may reasonably require and in a timely fashion
- 3 Unless XKO serves written notice (the "**Notice**") on the Vendor within 10 Business Days of delivery of the draft Working Capital Statement pursuant to paragraph 1 above, that it does not accept the same the parties shall at the end of that period be deemed to have accepted such draft Working Capital Statement which shall then be final and binding on the parties and which together shall be the Working Capital Statement for the purposes of this Agreement
4. A Notice served in accordance with paragraph 3 shall specify particulars of the dispute and any adjustments proposed to be made to the draft Working Capital Statement.
- 5 If XKO serves a Notice, then the Vendor and XKO shall each use all reasonable endeavours to reach agreement upon the matter or matters in dispute. If agreement on all disputed matters cannot be reached within 10 Business Days of the date of the Notice, any matter still in dispute shall be referred by XKO or the Vendor forthwith to a single independent chartered accountant or to an independent firm of chartered accountants (the "**Expert**") to be agreed between the Vendor and XKO within seven days or, failing such agreement, to be appointed by the President for the time being of the Institute of Chartered Accountants in England and Wales upon the application of any party. The Expert shall act as an expert and not as an arbitrator in connection with

the giving of any decision and the decision of the Expert shall be final and binding on the parties, except in the case of manifest error. In making such decision, the Expert shall have regard to any representations made by the Vendor and the Vendor's accountants and XKO and XKO's accountants. The costs of the Expert shall be borne as may be determined by him or, failing such determination, shall be borne as to half by XKO and half by the Vendor. Upon the agreement or determination (as the case may be) of the matter which is in dispute, such Working Capital Statement shall then be the statement of Working Capital Cash Value, Completion Creditors and Completion Debtors for the purposes of this Agreement.

- 6 The costs of the Vendor's accountants and other advisers in relation to all matters arising from this schedule shall be borne by the Vendor and the costs of XKO's accountants and other advisers in relation to all matters arising from this schedule shall be borne by XKO.
- 7 The Vendor shall procure that the Company delivers to XKO satisfactory verification relating to Received Amounts and any credit notes required to be issued in connection with Surplus Debtor Receivables so as to enable XKO to comply promptly with its obligations pursuant to paragraph 2.3 of Part 1 of this Schedule.

Part 3

(Surplus Debtors)

Name	Amount	Invoice Number
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Part 3 Surplus Debtors

UBM Limited					
Invoices under query					
As at 16th August 2005					
	Type	Date	Num	Value	
CBS					
	Invoice	19/01/2005	CBS/05/23	7,229.77	
	Invoice	09/02/2005	CBS/05/118	10,353.91	
	Invoice	09/02/2005	CBS/05/119	6,161.30	
	Invoice	09/02/2005	CBS/05/120	11,432.23	
	Invoice	09/02/2005	CBS/05/123	9,438.79	
	Invoice	09/02/2005	CBS/05/124	6,546.07	
	Invoice	15/03/2005	CBS/05/156	5,463.67	
	Invoice	15/03/2005	CBS/05/157	14,082.82	
	Invoice	15/03/2005	CBS/05/158	13,717.71	
	Invoice	15/03/2005	CBS/05/159	7,440.41	
	Invoice	15/03/2005	CBS/05/160	3,835.61	
	Invoice	15/03/2005	CBS/05/167	5,920.35	
	Invoice	15/03/2005	CBS/05/168	65.88	
	Invoice	31/03/2005	CBS/05/183	5,254.36	
	Invoice	31/03/2005	CBS/05/184	6,311.56	
	Invoice	31/03/2005	CBS/05/185	7,347.35	
	Invoice	31/03/2005	CBS/05/186	4,824.64	
	Invoice	31/03/2005	CBS/05/187	2,459.06	
	Invoice	31/03/2005	CBS/05/188	1,425.31	
	Invoice	31/03/2005	CBS/05/189	11,207.02	
	Invoice	31/03/2005	CBS/05/190	214.18	
	Invoice	04/05/2005	CBS/05/282	13,386.68	
	Invoice	04/05/2005	CBS/05/283	5,564.87	
	Invoice	04/05/2005	CBS/05/284	1,404.15	
	Invoice	04/05/2005	CBS/05/285	5,495.37	
	Invoice	04/05/2005	CBS/05/286	2,874.17	
	Invoice	04/05/2005	CBS/05/287	8,231.25	
	Invoice	04/05/2005	CBS/05/288	4,206.45	
	Invoice	04/05/2005	CBS/05/289	5,861.81	
	Invoice	04/05/2005	CBS/05/302	2,019.29	
	Invoice	04/05/2005	CBS/05/303	317.74	
	Invoice	04/05/2005	CBS/05/304	11,240.85	
	Invoice	04/05/2005	CBS/05/305	6,468.94	
	Invoice	04/05/2005	CBS/05/306	8,606.43	
	Invoice	04/05/2005	CBS/05/307	1,882.49	
	Invoice	04/05/2005	CBS/05/308	5,544.66	
	Invoice	04/05/2005	CBS/05/309	2,905.56	
	Invoice	04/05/2005	CBS/05/310	5,721.06	
	Invoice	05/05/2005	CBS/05/294	166.40	
	Credit Memo	05/05/2005	CBS/05/312	-1,009.56	
	Invoice	13/05/2005	CBS/05/332	321.67	
	Invoice	13/05/2005	CBS/05/333	110.38	
	Invoice	13/05/2005	CBS/05/334	43.13	
	Invoice	17/05/2005	CBS/5/351	596.42	
	Invoice	17/05/2005	CBS/5/353	9,184.52	
	Invoice	18/05/2005	CBS/5/341	1,263.13	
	Invoice	18/05/2005	CBS/5/342	775.50	
	Invoice	18/05/2005	CBS/5/343	558.13	

	Type	Date	Num	Value
	Invoice	18/05/2005	CBS/5/344	329 00
	Invoice	26/05/2005	CBS/05/354	13,677 00
	Invoice	26/05/2005	CBS/05/355	1,269 00
	Invoice	26/05/2005	CBS/05/356	2,937 50
	Invoice	26/05/2005	CBS/05/357	2,232 50
	Invoice	26/05/2005	CBS/05/358	675 63
	Invoice	26/05/2005	CBS/05/359	352 50
	Invoice	26/05/2005	CBS/05/360	411.25
	Invoice	26/05/2005	CBS/05/361	305 50
	Invoice	26/05/2005	CBS/05/362	29 38
	Invoice	26/05/2005	CBS/05/363	47 00
	Invoice	07/06/2005	CBS/05/376	6,873 75
	Invoice	07/06/2005	CBS/05/377	4,794 00
	Invoice	07/06/2005	CBS/05/378	675 63
	Invoice	07/06/2005	CBS/05/379	423 00
	Invoice	07/06/2005	CBS/05/380	293.75
	Invoice	07/06/2005	CBS/05/383	141 00
	Invoice	07/06/2005	CBS/05/384	282 00
	Invoice	07/06/2005	CBS/05/402	59 58
	Invoice	07/06/2005	CBS/05/404	516 81
	Invoice	07/06/2005	CBS/05/405	6,258 49
	Invoice	07/06/2005	CBS/05/406	576 75
	Invoice	08/06/2005	CBS/05/409	7,020 63
	Invoice	08/06/2005	CBS/05/410	6,016 00
	Invoice	08/06/2005	CBS/05/411	1,116 25
	Invoice	08/06/2005	CBS/05/412	940 00
	Invoice	08/06/2005	CBS/05/414	141 00
	Invoice	08/06/2005	CBS/05/415	564 00
	Invoice	08/06/2005	CBS/05/416	352 50
	Invoice	15/06/2005	CBS/05/423	4,501.38
	Invoice	15/06/2005	CBS/05/424	3,285 05
	Invoice	15/06/2005	CBS/05/425	1,041 25
	Invoice	15/06/2005	CBS/05/427	121 64
	Invoice	15/06/2005	CBS/05/428	1,116 25
	Invoice	15/06/2005	CBS/05/429	728 50
	Invoice	15/06/2005	CBS/05/430	1,263 13
	Invoice	15/06/2005	CBS/05/431	1,175 00
	Invoice	15/06/2005	CBS/05/432	499 38
	Invoice	15/06/2005	CBS/05/433	94 00
	Invoice	22/06/2005	CBS/05/446	616 88
	Invoice	22/06/2005	CBS/05/448	323 13
	Invoice	22/06/2005	CBS/05/451	23 50
	Invoice	28/06/2005	CBS/05/459	5,115 75
	Invoice	29/06/2005	CBS/05/462	440 63
	Invoice	29/06/2005	CBS/05/464	910 63
	Invoice	29/06/2005	CBS/05/466	616 88
	Invoice	29/06/2005	CBS/05/468	352 50
	Total			326,010 37
	CBX			
	Invoice	26/01/2005	CBX/05/2	12,726 98
	Invoice	13/05/2005	CBX/05/12	30,399 96
	Invoice	13/05/2005	CBX/05/16	3,446 20
	Invoice	18/05/2005	CBX/05/18	433 58

	Type	Date	Num	Value
	Invoice	18/05/2005	CBX/05/19	626 51
	Invoice	09/06/2005	CBX/05/23	4,302 49
	Invoice	29/06/2005	CBX/05/24	595 43
	Invoice	12/07/2005	CBX/05/27	7,117 21
Total				59,648.36
NPE				
	Payment	27/07/2005	517490	-0 01
	Invoice	04/02/2005	NPE/05/5	0 01
	Invoice	04/02/2005	NPE/05/7	6,619 46
	Invoice	07/02/2005	NPE/05/2	12,572.50
	Invoice	10/02/2005	NPE/05/3	1,222 00
	Invoice	24/03/2005	NPE/05/34	298 74
	Invoice	24/03/2005	NPE/05/31	3,009.21
	Invoice	31/03/2005	NPE/05/35	331.98
	Invoice	26/04/2005	NPE/05/36	3,915 09
	Invoice	26/04/2005	NPE/05/37	18 51
	Invoice	26/04/2005	NPE/05/40	37 24
	Invoice	26/04/2005	NPE/05/42	13,733 72
	Invoice	26/04/2005	NPE/05/44	27,418 65
	Invoice	26/04/2005	NPE/05/45	1,674 38
	Invoice	26/04/2005	NPE/05/46	881 25
	Invoice	26/04/2005	NPE/05/47	39,421.25
	Invoice	26/04/2005	NPE/05/48	76 38
	Invoice	26/04/2005	NPE/05/49	76 38
	Invoice	26/04/2005	NPE/05/50	2,825 88
	Invoice	26/04/2005	NPE/05/51	76 38
	Invoice	26/04/2005	NPE/05/52	229.13
Total				114,438.13
Total under query				500,096 86

Executed as a Deed (but not
delivered until the date appearing
at the head of page 1) by
Robin Alvarez
in the presence of:

Signature of witness.

Name L. Nathan

Address 12 Red Lion Square
London WC1R 4QD

Occupation Miller

RPO

Executed as a Deed (but not
delivered until the date
appearing at the head of
page 1) by XKO Group PLC
acting by

Director

Director/Secretary]

Simon Saxton
Will Reed

We hereby certify that this is a true
and accurate copy of the original
dated this 03 day of October 2007

Osborne Clarke
Osborne Clarke
Apex Plaza
Forbury Road
Reading RG1 1AX

Deed of Variation

relating to the sale and purchase of the whole of the issued
share capital of UBM Limited

- (1) Robin Alvarez
- (2) Revenue Assurance Services plc (formerly XKO
Group plc)

Dated

12th

March 2007

IMC2/3536983v2

Osborne Clarke

Thames Valley Office

Apex Plaza, Forbury Road, Reading RG1 1AX
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2 Temple Back East, Temple Quay, Bristol, BS1 6EG
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This Deed is made the day 12th of March 2007

Between:

- (1) **Robin Alvarez** of 9 The Grove, Highgate, London, N6 6JU ("the Vendor"); and
- (2) **Revenue Assurance Services Plc** (company number: 2950904) whose registered office is at 7th Floor, One Crown Square, Church Street East, Woking, Surrey, GU21 6HR ("the Purchaser").

Background:

- (A) This Deed is supplemental to the Acquisition Agreement (defined below).
- (B) By an agreement dated 18 August 2005 made between (1) the Vendor and (2) the Purchaser, the Purchaser agreed to purchase the whole of the issued share capital of UBM Limited ("the Company") ("the Acquisition Agreement").
- (C) The Purchaser and the Vendor have now agreed to vary certain terms of the Acquisition Agreement on the terms set out below.

It is agreed as follows:

1. Definitions and Interpretation

In this Deed, except as specifically provided otherwise, or unless the context otherwise requires, words and phrases shall have the meanings given to them in the Acquisition Agreement.

2. Variation of the Acquisition Agreement

- 2.1 The Vendor and RAS hereby agree and confirm that the Acquisition Agreement shall be varied in accordance with this clause 2 as follows:

Definitions

- (a) Each reference to "**XKO Group plc**" and "**XKO**" in the Acquisition Agreement shall be deemed to be a reference to "**Revenue Assurance Services plc**" and "**RAS**" respectively
- (b) The meaning of "**B**" **Consideration**" on page 4 of the Acquisition Agreement shall be deleted and replaced with the following words so that the definition of "**B**" Consideration shall read "**means together the Series "B" Guaranteed Loan Notes and the "B" Consideration Shares.**"

(c) The definition of "**Tax**", "**Taxes**" or "**Taxation**" on page 10 of the Acquisition Agreement shall be deleted and replaced with the following words so that the definition of "**Tax**", "**Taxes**" or "**Taxation**" shall read *"means all forms of taxation and statutory, governmental, supra governmental, state, provincial, local governmental or municipal impositions, duties, contributions and levies (including withholdings and deductions), whether of the United Kingdom or elsewhere in the world, whenever imposed and however arising and all penalties, fines, charges, costs and interest, together with the cost of removing any related charge or other encumbrance"*

(d) There shall be added to clause 1.1 the Acquisition Agreement the following definitions

Series "B" Guaranteed Loan Notes" means the amount of £6,400,000 nominal amount of Series "B" Guaranteed Loan Notes

"B" Consideration Loan Note Issue Date " means the date of this Deed (or such later date as the parties may agree from time to time).

"B" Consideration Shares" means 2,352,942 RAS Shares.

"B" Consideration Share Payment Date" means 30th September 2007

"Claim for Taxation" means any notice, demand, assessment, letter or other document issued or action taken by any Tax Authority (including the Company) indicating that any person is or may be placed or sought to be placed under either a Liability to Taxation or a claim for Taxation

"ICTA" means the Income Tax (Earnings and Pensions) Act 2003.

"Liability to Taxation" means:

- (a) any liability to make a payment of or in respect of Taxation regardless of whether such Taxation is chargeable or attributable directly or primarily to the Company;

- (b) the loss of any Relief which would (were it not for the loss) have been available to the Company and which has been treated as an asset in preparing the Accounts or taken into account in computing (and so reducing) or obviating any provision for deferred taxation which appears in the Accounts (or which, but for the availability or presumed availability of such Relief prior to its loss, would have appeared in the Accounts),
- (c) the setting off against any liability to Taxation or against Profits earned, accrued or received before Completion of any Relief which arises in respect of any period after Completion or in respect of any Transaction effected after Completion in circumstances where, but for the setting off, the Company would have had a liability to Taxation in respect of which RAS (ignoring any limitations on liability contained herein) would have been able to make a claim against the Vendor under the Tax Covenant,
- (d) any liability to make a payment by way of indemnity arising out of or in connection with Taxation, and
- (e) references to a Liability to Taxation shall include the settlement of a Claim for Taxation.

"Profits"

means income, profits and gains, the value of any supply and any other consideration, value or receipt used or charged for Taxation purposes and references to "Profits earned, accrued or received" include Profits deemed to have been earned, accrued or received for Taxation purposes.

"Relief"

means any relief, loss, allowance, exemption, set-off, deduction or credit in computing or against Profits or Taxation or any right to repayment of Taxation and references to the **"loss of any Relief"** include the loss, reduction, counteraction, disallowance, setting-off against Profits, crediting against a liability to make an actual payment of Taxation or failure to obtain a Relief and **"lose"** and **"lost"** shall be construed accordingly.

"Tax Authority"

means any taxing or other authority, body or official competent to administer, impose or collect any Taxation.

"Transaction"

means any transaction, deed, act, event, omission, payment or receipt of whatever nature and whether actual or deemed for Tax purposes and references to **"any Transaction effected before Completion"** include the combined result of two or more Transactions, any one of which shall have taken place or commenced (or be deemed to have taken place or commenced).

- (i) before Completion and was not in the ordinary course of business; and
- (ii) after Completion and was in the ordinary course of business.

"Vendor Associate"

means any Vendor and any other person with whom the Vendor is either associated (within the meaning of section 417 ICTA) or connected (within the meaning of section 839 ICTA) other than the Company and any Group Company

Variation of the "B" Consideration

- (e) The existing sub-clauses 61 to 69 (inclusive) of the Acquisition Agreement shall be deleted and replaced as follows.

- "6.1 On the "B" Consideration Loan Note Issue Date, RAS shall issue the Series B Guaranteed Loan Notes in the amount of £6,400,000 to the Vendor and RAS shall procure the issue of the Lloyds Guarantee
- 6.2 When the obligations in sub-clause 6.1 have been satisfied, RAS shall have no further obligations under the terms of the Acquisition Agreement to issue any Loan Notes to the Vendor
- 6.3 On the "B" Consideration Share Payment Date, RAS shall allot and issue, credited as fully paid, to the Vendor the "B" Consideration Shares, such shares ranking *pari passu* in all respects with the existing RAS Shares then in issue, save for any dividends or distributions made or paid prior to the "B" Consideration Share Payment Date and shall deliver a share certificate in respect thereof and will procure that the "B" Consideration Shares are admitted to trading on AIM."

Conduct of business during the Earn-out Periods

- (f) The existing sub-clauses 7.1 to 7.8 shall be deleted.

Post Completion Matters

- (g) There shall be added to the Acquisition Agreement a new sub-clause 11.9 as follows.

"11.9 On 31 March 2007 or on any earlier date as agreed between the parties, the Vendor shall resign as a director of the Company with immediate effect and shall deliver to the Purchaser a duly executed copy of the Consultancy Agreement"

Warranties

- (h) Sub-clauses 12.1 to 12.4 (inclusive) and the provisions of Schedule 3 (for the purposes of this Deed, referred to as the "Warranties") shall be deleted. The Warranties shall cease to have any further effect, RAS shall have no right whatsoever to make any claim against the Vendor in respect of the Warranties and RAS hereby waives and releases the Vendor from or in respect of any claim that it may have under the Warranties

Tax Covenant

- (i) The provisions of clause 13 shall be deleted and replaced as follows:

"13.1 The Vendor undertakes to RAS to pay an amount equal to any Liability to Taxation of the Company which arises as a result of or with respect to any income, earnings or other payment or

sum (whether in cash or in kind) paid or payable at any time, benefits given or to be given at any time or loans or advances made or to be made at any time (or which are deemed for tax purposes to be made) to the Vendor or any Vendor Associate together with all costs and expenses reasonably and properly incurred by RAS or the Company in connection with such Liability to Taxation or in bringing any claim or defending any action under the provisions of this sub-clause 13.1

13.2 None of the limitations on liability or other exclusions set out in the Agreement shall apply to the provisions of sub-clause 13.1."

Tax Schedule

- (j) The provisions of Schedule 5 shall be deleted and shall cease to have any further effect, RAS shall have no right whatsoever to make any claim against the Vendor in respect of the provisions of Schedule 5 and RAS hereby waives and releases the Vendor from or in respect of any claim that it may have under the provisions of Schedule 5

Indemnities

- (k) The existing sub-clauses 16.1 to 16.5 (inclusive) (for the purposes of this Deed referred to as the "Indemnities") shall be deleted and shall cease to have any further effect, RAS shall have no right whatsoever to make any claim against the Vendor in respect of the Indemnities and RAS hereby waives and releases the Vendor from or in respect of any claim that it may have under the Indemnities.

3. Continuation of Acquisition Agreement

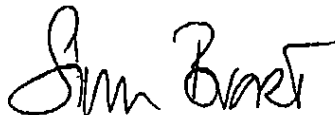
Subject to the variations provided for by this Deed, the Acquisition Agreement shall remain in full force and effect in all other respects.

In witness this Deed has been executed on the date appearing at the head of page 1.

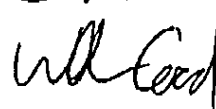
Executed as a Deed (but not)
delivered until the date appearing)
appearing at the head of page 1) by)
Revenue Assurance Services Plc)

acting by:

Director



Secretary



Executed as a Deed (but not)
delivered until the date appearing)
appearing at the head of page 1) by)
Robin Alvarez in the presence of)



Signature of witness 

Name: NM Davis

Address Summit House, 12 Red

Leam Square, London WC1

Occupation: Solicitor