



AGREEMENT FOR TECHNICAL SUPPORT

DATE 2005

PARTIES:

- 1. **GLOBE MICROSYSTEMS LIMITED** (company number) the registered office of which is at [] ("**Globe**") and

- 2. [] (company number) the registered office of which is at [] (the "User")

SERVICES SUPPLIED

In consideration of the payment of the support fees by the User as set out in the Order Schedule Part One ("Service Fee") Globe shall provide to the User the technical support services described in schedule 2 ("Services") as further detailed in the Order Schedule Part One for its network and systems as described in the Order Schedule Part Two ("System") in accordance with the provisions of schedule 1.

SIGNED on behalf of **GLOBE**)
By)
Name)
Position)

SIGNED by on behalf of the **USER**)
By)
Name)
Position)

Schedule 1

Terms and Conditions

1. TERM

This agreement will run for an initial term of one year beginning on the date hereof and subject to the provisions of clause 8, this agreement will then continue to run automatically after the initial term for successive periods of one year unless either the User or Globe gives to the other not less than three months written notice to terminate the agreement or it is terminated under clause 7.

2. THE USER'S OBLIGATIONS

The User agrees that it shall throughout the term of this agreement:

- 2.1 Investigate, but only investigate, any possible malfunction of the System to determine to the best of its ability the cause and then to notify Globe;
- 2.2 to comply with the Globe back-up policy;
- 2.3 ensure that all its staff using the System have adequate skills and training to use it properly;
- 2.4 grant Globe such access to the location specified in the Order Schedule Part One ("Location") as Globe shall from time to time reasonably require for discharging its obligations hereunder;
- 2.5 make available at the Location such facilities as Globe shall reasonably require for discharging its obligations hereunder including adequate workspace, power supplies and equipment;
- 2.6 make available employees of the User with appropriate skills, knowledge and authority to assist Globe's staff in the diagnosis of faults and the implementation of reasonable instructions intended to rectify or prevent recurrence of faults;
- 2.7 take all reasonable precautions to protect the health and safety of Globe's employees, agents and sub-contractors while at the Location; and
- 2.8 perform system tests as requested by Globe;
- 2.9 provide written descriptions of problems as requested by Globe; and
- 2.10 ensure no modifications are made to the System other than at the direction of Globe's personnel.
- 2.11 Where Globe are providing hardware warranty and licensing advice, disclose to Globe all relevant facts and documentation

3. CHARGES

- 3.1 If Globe proposes to increase the Service Fee, it shall give not less than 120 days prior written notice of increase to the User effective at the commencement of the following year during which the Service is to be provided.

- 3.2. The Service Fee shall be invoiced by Globe annually in advance and shall be payable by the User in accordance with the payment arrangements agreed.
- 3.3. Invoices for other charges shall be raised immediately after the provision of the relevant services and are payable in accordance with the payment arrangements agreed.
- 3.4. Globe reserves the right to charge the User interest in respect of the late payment of any Service Fee or other charges due under this agreement at the rate of 3 per cent above the base rate of Bank of Scotland until payment and to withhold the provision of services hereunder until the User has paid all overdue invoices in full.
- 3.5. The Service Fee and all charges are quoted exclusive of value added tax, which shall be charged at the rate prevailing at the time of invoice.

4. **WARRANTIES**

- 4.1. Globe warrants and undertakes to the User:
 - 4.1.1. to perform the Services with reasonable care and skill, and
 - 4.1.2. that it has full power to license the User to use any software or fixes supplied to the User.
- 4.2. Globe does not warrant that the Services will cause the System to operate without interruption or error.
- 4.3. Subject to the foregoing, all conditions, warranties, terms and undertakings, express or implied, statutory or otherwise, in respect of the performance by Globe of the services hereunder are hereby excluded.

5. **LIMITATION OF LIABILITY**

- 5.1. "Default" means:
 1. any act, representation or omission by Globe its officers, employees or agents; or
 2. any such which is done, made or not done (as the case may be) as a result of any act, representation or omission of any of them

(whether deliberate or negligent), in connection with or in relation to this agreement as a result of which Globe is legally liable to the User or any third party whether in contract, tort or otherwise. A number of Defaults which together result in or contribute to substantially the same loss or damage shall be treated as one Default occurring on the date of the occurrence of the last such Default.

5.2. The following clause specifies the extent to which Globe will be liable for Default. Its principal terms are a financial limit on Globe's liability (except for death or personal injury), the liability of Globe only for certain defined losses and a time limit applicable to both parties for the enforcement of claims. Globe's entire liability and the User's sole remedies, whether in contract, tort or otherwise, shall be as set out in this clause.

- 5.3. Except as expressly provided in this clause, all conditions, representations and warranties

(express or implied, statutory or otherwise) are excluded to the extent permitted by law including without limitation any implied warranties or conditions as to quality or fitness for purpose.

- 5.4 The User shall always inform Globe of any Default and afford it a reasonable opportunity of correcting that Default including, without limitation, the option of correcting any deficiency in the System.
- 5.5 Globe shall not be liable for any loss incurred:
 - 5.5.1 after the date Globe corrects the Default;
 - 5.5.2 12 months after the date of the Default;
 - 5.5.3 to the extent that Globe affords the User a reasonable opportunity to mitigate its losses, damage, liabilities or expenses by providing alternative or additional equipment or software.
- 5.6 Globe will not be liable for the following loss or damage however caused and even if foreseeable by Globe:
 - 5.6.1 economic loss, which term shall include loss of profits, loss of use of profits, business, revenue, goodwill or anticipated savings;
 - 5.6.2 loss of or damage to the User's or a third party's data;
 - 5.6.3 special, indirect or consequential loss (other than direct physical damage to tangible property);
 - 5.6.4 loss arising from any claim made against the User by a third party; or
 - 5.6.5 loss or damage arising from the User's failure to fulfil its responsibilities or any matter under the control of the User or a third party; or
 - 5.6.6 loss or damage arising from Globe acting in accordance with the instructions of the User, its officers, employees, agents or third parties engaged by the User.
- 5.7 Except as provided by law Globe's entire liability for actual damages in respect of any one Default shall not, in any event, exceed 150% of the total charges relating to that part of the Service to which the Default related paid by the User during the year in which the Default occurs.
- 5.8 Except in respect of payments due under this agreement or as provided by law no action may be brought by either party against the other more than two years after the cause of action has accrued.
- 5.9 The User agrees to indemnify Globe against all actions, proceedings, claims and demands in any way connected with this agreement or the Upgrades brought or threatened against Globe by a third party except to the extent that Globe is liable to the User for a Default.
- 5.10 The User acknowledges that:
 - 5.10.1 the charges have been calculated on the basis that Globe excludes and/or limits its

liability to the User in accordance with this agreement;

5.10.2 that the exclusions and limitations contained in this agreement are fair and reasonable in all the circumstances known at the date of this agreement;

5.10.3 it is not possible to foresee and provide in the agreement (in particular by way of adjustments to the charges for all contingencies, which may give rise to loss, damage or liability).

5.11 Each of the limitations and exclusions set out above is to be construed as a separate limitation or exclusion, applying and surviving even if for any reason one or other of the limitations or exclusions is held inapplicable or unreasonable in any circumstances, and shall remain in force despite termination of this agreement.

6. **CONFIDENTIALITY**

6.1 Each of the parties hereto undertakes to the other to keep confidential all information (written or oral) concerning the business and affairs of the other that it shall have obtained or received save that which is:

6.1.1 trivial or obvious;

6.1.2 already in its possession other than as a result of a breach of this clause; or

6.1.3 in the public domain other than as a result of a breach of this clause.

6.2 Each of the parties undertakes to the other to take all such steps as shall from time to time be necessary to ensure compliance with the provisions of this clause by its employees agents and sub-contractors.

6.3 No announcement of any kind shall be made in respect of the subject matter of this agreement except as specifically agreed between the parties.

7. **TERMINATION**

7.1 This agreement may be terminated:

7.1.1 forthwith by Globe if the User fails to pay any amount within the agreed payment terms;

7.1.2 forthwith by either party if the other commits any material breach of any term of this agreement and which (in the case of a breach capable of being remedied) shall not have been remedied within 14 days of a written request to remedy the same;

7.1.3 forthwith by either party if the other shall convene a meeting of its creditors or if a proposal shall be made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal for any other composition scheme or arrangement with (or assignment for the benefit of) its creditors or if the other shall be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or if a trustee receiver administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the other or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are

taken for the winding up of the other or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction).

7.2 Termination for any reason other than lawful termination by the User under clause 7.1.2 shall not entitle the User to a refund of any Service Fee paid in advance.

7.3.1 Any termination of this agreement pursuant to this clause shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party nor the coming into or continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

8. **FORCE MAJEURE**

8.1 Neither party hereto shall be liable for any breach of its obligations hereunder resulting from causes beyond its reasonable control including, but not limited to, fires strikes (of its own or other employees), insurrection or riots, embargoes, container shortages, wrecks or delays in transportation, inability to obtain supplies and raw materials, requirements or regulations of any civil or military authority (an "Event of Force Majeure").

8.2 Each of the parties hereto agrees to give notice forthwith to the other upon becoming aware of an Event of Force Majeure, such notice to contain details of the circumstances giving rise to the Event of Force Majeure.

8.3 If a default due to an Event of Force Majeure shall continue for more than four weeks, then the party not in default shall be entitled to terminate this agreement. Neither party shall have any liability to the other in respect of the termination of this agreement as a result of an Event of Force Majeure.

9. **WAIVER**

The waiver by either party of a breach or default of any of the provisions of this agreement by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions, nor shall any delay or omission on the part of either party to exercise or avail itself of any right power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other party.

10. **NOTICES**

10.1 Any notice pursuant to this agreement shall be in writing signed by (or by some person duly authorised by) the person giving it and may be served by leaving it at or sending it by telex fax transmission recorded delivery or registered post to the appropriate address set out herein or such address as shall be notified from time to time.

10.2 Any of the foregoing correspondence shall be deemed to have reached the party to whom it is addressed as follows:-

10.2.1 By mail within the United Kingdom - 2 Business Days after posting

10.2.2 By mail outside the United Kingdom - 7 Business Days after posting.

10.2.3 By hand - at the actual day and time of receipt.

10.2.4 By telex or fax - one hour after the time of transmission

Save that in the case of hand delivery, delivery which otherwise would be deemed to be after 5 p.m. on a Business Day or on a day which is not a Business Day shall be deemed to be delivery at 10 a.m. on the next Business Day thereafter

10.3 In proving service of a notice or document it shall be sufficient to prove that delivery was made or that the envelope containing the notice or document was properly addressed and posted as a prepaid first class recorded delivery letter or that the telex or facsimile message was properly addressed and despatched to the correct number as the case may be.

11. **INVALIDITY AND SEVERABILITY**

If any provision of this agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the other provisions of this agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provision.

12. **ENTIRE AGREEMENT**

Globe shall not be liable to the User for loss arising from, or in connection with, any representations, agreements, statements or undertakings made prior to the date of execution of this agreement other than those representations, agreements, statements or undertakings confirmed by a duly authorised representative of Globe in writing or expressly incorporated or referred to in this agreement.

13. **ASSIGNMENT**

The User shall not be entitled to assign or otherwise transfer this agreement nor any of its rights or obligations hereunder [except when the software licence is assigned] without the prior written consent of Globe which shall not be unreasonably withheld or delayed.

14. **LAW**

This agreement shall be governed by and construed in accordance with English law and the parties hereto agree to submit to the non-exclusive jurisdiction of the English courts.

15. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

This agreement is not intended to confer rights on third parties

Schedule 2

Services

Technical Response Support (Helpline)

1. Globe will provide a "Helpline" telephone advisory service, using such UK telephone number(s) as may be advised to the User from time to time, between the hours of 9.00 am and 5.30 pm. ("Hours") on each day of the week except for Saturdays and Sundays and Public Holidays ("Working Day").
2. Once a "Helpline" call has been received by Globe, the call will normally be routed immediately to a member of staff with the relevant expertise to be able to offer assistance and instruction over the telephone. Globe undertakes to use all reasonable endeavours to ensure that the relevant person will deal with the particular problem within 60 minutes of the call being received.
3. Globe will use all reasonable endeavours to respond and resolve problems with the System within the following time scales, starting with the first call to the Helpline:

Error Category	Response Time	Temporary Fix	Permanent Fix
Major Error	60 minutes	12 Hours	5 working days
Serious Error	60 minutes	1 working day	14 working days
Other Error	60 minutes	14 working days	50 working days

Key

A "**major error**" is an error which prevents the System or a module thereof from being run and/or cripples the System or a module thereof or causes substantial damage to the User's data.

A "**serious error**" is an error which causes severe performance degradation; causes a halt to the operation of important tasks by the User or places the operation of such tasks at risk; i.e. failure of a major feature; severely degrades a user application where no alternative exists; causes delay in a time critical implementation of the System; or causes any damage to the User's data.

An "**other error**" is any defect in the System or any failure of the System to perform in accordance with and provide the facilities, functions and capacity set out in the operating manuals, other than a major error or a serious error.

A "**temporary fix**" is an acceptable temporary work around the error, which allows the User to operate the System without substantial degradation in performance. A temporary fix can include changing back to the previous version of software.

A "**permanent fix**" is a permanent resolution of the error, which restores the System to full performance in accordance with the software operating manuals.

Service Visits

At the frequency specified in the Order Schedule Part One, Globe will run a series of checks to verify the System is fully operational, update drivers and firmware, install service packs, updates, and undertake any remedial action required.

Remote Health Checks

At the frequency specified in the Order Schedule Part One, Globe will carry out remote checks on the System's servers, and if necessary undertake any remedial action required.

Remote Monitoring

Subject to the System meeting Globe's specification to receive this service, the System's servers will be monitored at the frequency specified in the Order Schedule Part One, and Globe's technical team will be warned of systems or hardware, actual or potential failure.

Document Verification

At the frequency specified in the Order Schedule Part One, a thorough audit of System documentation will be carried out to ensure records are accurate and up to date.

Licensing and Warranty Advice

Subject to the User complying with clause 2.11 of schedule 1, as part of the audit Globe will advise the User on its licensing position.

EXCLUSIONS

Unless specifically included in the Services, the Services do not include:

1. the diagnosis and rectification of any fault, or the restoration of lost or corrupted data, resulting from:
 - 1.1 the improper use, operation or neglect of the System;
 - 1.2 the modification of the System;
 - 1.3 the use of a System other than that specified in schedule 1
 - 1.4 the failure by the User to implement recommendations in respect of or solutions to faults previously advised by Globe;
 - 1.5 any repair adjustment alteration or modification of the System by any person other than Globe without Globe's prior written consent;
 - 1.6 the Users failure to install or permit Globe to install any release of software recommended by Globe as part of the system.
 - 1.7 the use of the System for a purpose for which it was not designed; or
 - 1.8 the negligence of the User or any third party.

- 2 site visits other than as part of the Services;
- 3 an initial set-up of data or data inputting;
- 4 transfer of software and data from one computer to another;
- 5 prolonged investigation of errors by the User's staff;
- 6 training of the User's staff in the use of System;
- 7 a response to a warning from the remote systems management outside of hours..
- 8 telephone support on software not listed in the Order Schedule Part Two; and
- 9 rectification of lost or corrupt data or programs arising for any reason other than a proven error in a mathematical calculation within software or an error which causes software substantially to fail to operate.
- 10 hardware failures

Globe shall upon request by the User provide the Service notwithstanding that the fault results from any of the circumstances described above but shall be entitled to charge for the same at its current charging rates.

Further Attachments to this Agreement

Form qmf21 Technical Support Services - Order Schedule Part One
 Technical Support Services - Order Schedule Part Two

Form qmf22 is attached if marked on the qmf21 as attached.