

TERMS AND CONDITIONS OF SITE CONSTRUCTION AND DEVELOPMENT AND DOMAIN HOSTING

1. Definitions

In these Terms and Conditions, the following words and expressions will have the following meanings unless the context otherwise requires:

"Agreement"	the Agreement between the Airpro and the Customer incorporating the Particulars and these Terms and Conditions including all designs, specifications, descriptions, plans, Schedules and other Documents referred to in these Terms and Conditions or attached hereto;
"Airpro's Confidential Information"	all information (whether written or oral), Documents, Airpro's Input Material and Airpro's Intellectual Property Rights supplied or disclosed to the Customer, its employees, contractors or representatives by Airpro, its employees, contractors or representatives both during the discussions leading up to the Agreement and during the continuance of the Agreement in accordance with the terms of the Agreement or any other agreement between Airpro, its Associates and the Customer and/or its Associates;
"Airpro's Input Material"	the Software (other than any third party software) including without limitation the Documents, all process and page control, data validation and server interface routines and scripts including all technology and coding relating to the same in all languages including, without limitation, HTML, XML, WML, WML Script and HTML and all server site scripts, links to other services, screen outputs/results, error messages, Airpro's standard website templates, text and graphics, Airpro's trade marks, logos and branding and copyright notices, data and any other materials and information provided by Airpro to the Customer pursuant to the terms of the Agreement;
"CDPA"	the Copyright Designs and Patents Act 1988;
"Charges"	all charges payable to Airpro by the Customer pursuant to the terms of the Agreement;
"Commencement Date"	the date specified in the Timetable or if there is no such date the date Airpro commences hosting the Site under this Contract;
"Content"	the content of the Site being all images, displays, menus, pages, sounds and data accessible by WWW Users;
"Construction Commencement Date"	the date specified in the Timetable or if there is no such date the date Airpro commences work under this Agreement;
"Documents"	in addition to any document in writing, any map, plans, computer source or object code, graph, drawing or photograph, any film, moving image, negative, tape, disk, CD ROM or other tape or other device embodying any other data;
"Domain"	the Site together with email services (including the receiving and sending of emails) and related ancillary services;
"Event of Force Majeure"	causes beyond the reasonable control of the parties including but not limited to fires, strikes (of its own or other employees), insurrections or riots, embargoes, delays in transportation, requirements or regulations of any civil or military authority;
"Intellectual Property Rights"	any and all copyrights, moral rights, related rights, patents, supplementary protection certificates, petty patents, utility models, trade

marks, trade names, service marks, design rights, database rights, semi-conductor topography rights, domain name rights, rights in undisclosed or confidential information (such as know-how, trade secrets and inventions (whether patentable or not)), and other similar intellectual property rights (whether registered or not) and applications for any such rights as may exist anywhere in the world;

"Live Date"	the actual date upon which the Site goes live;
"Operating Environment"	the hardware, firmware and software on, under or with which the Site, the Server and the Software are installed, stored, run or used (as applicable) including the make, model and release of computer, CPU, RAM, operating system, software facilities, other software of whatever sort, processing speed, clock speed, network type speed and capacity, peripherals, peripheral drivers, monitors, disk drives, tape drives, communications software and printers, including without limitation those items listed in the Particulars or such other environment as approved in writing by Airpro from time to time;
"Particulars"	the particulars attached hereto;
"Permitted Use"	use in connection with the Customer's business specified in the Particulars;
"Primary Hosting Service Provider"	the holding service provider from time to time, as appointed by Airpro, at its sole discretion, to provide the Server and other ancillary services;
"Services"	any services provided by Airpro as set out in the Particulars and which shall be subject to these Terms and Conditions;
"Server(s)"	the server upon which the Domain will reside and operate as specified in the Particulars;
"Site"	the website comprising all pages including graphics, audio visual effects, software and all the material to be designed, developed, and constructed by Airpro for the Customer pursuant to the terms of the Agreement;
"Software"	any proprietary computer software application(s), manuals and other documentation of Airpro written by or supplied by Airpro for the Customer and including (excluding any third party software) and all computer applications, scripts and coding comprised within or relating to the Site;
"Specification"	the specification for the Site developed by Airpro in accordance with Clause 4.1 and agreed between the parties;
"Termination Date"	the date upon which the Agreement terminates;
"Timetable"	the timetable for performance of the obligations of Airpro and the Customer under the Agreement as the same will be mutually agreed between the parties;
"Warranty Claim"	a claim for a breach of any of the warranties set out in Clause 10.2;
"Warranty Period"	the period of 60 Working Days from the Live Date;
"Working Day"	any day on which the clearing banks in the City of London are open for business;
"WWW"	the World Wide Web;

- 1.2 Any reference in these Terms and Conditions to any provisions of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
- 1.3 The headings in these Terms and Conditions are for convenience only and shall not affect its interpretation.
- 1.4 Any reference to the masculine gender includes the feminine and neuter gender and vice versa.

- 1.5 Any reference in these Terms and Conditions to a Clause or a Schedule is to a Clause of the Agreement.
- 1.6 References to persons in these Terms and Conditions can include companies, associations, partnerships and all other legal entities or groups of legal entities.
- 1.7 Where the Customer is two or more persons, such persons' liability under the Agreement shall be joint and several.

2. Appointment of Airpro

The Customer appoints Airpro to develop, construct and host the Domain on an exclusive basis and Airpro agrees to develop, construct and host the Domain subject to these Terms and Conditions.

3. Duration

Subject to Clause 16, the Agreement shall commence on the Construction Commencement Date and shall continue for the period set out in the Particulars and thereafter shall continue until terminated by either the Customer or Airpro giving to the other not less than the written notice set out in the Particulars such notice to expire no earlier than the date of the expiry of the said initial fixed period.

4. Airpro's and the Customer's initial obligations

- 4.1 Airpro will following the provision of the information required from the Customer under Clause 4.2 use reasonable endeavours to produce the Specification in accordance with the Timetable or if no such date is specified as soon as is reasonably practicable following the Commencement Date.
- 4.2 The Customer shall provide to Airpro forthwith upon Airpro's request all information and documents requested by Airpro to enable it to perform its obligations.
- 4.3 If the Customer requests an amendment to the Specification to take account of any application, function or performance criteria not specified in the initial Specification, or to delete any application, function or performance criteria specified in the initial Specification, then Airpro shall decide whether or not to accept the amendment. If Airpro does decide to accept the amendment, then it shall be entitled to make such revision to the Timetable, the Live Date and the Charges as it shall in the circumstances reasonably judge necessary. If the Airpro decides not to accept the amendment, then it will notify the Customer of the reasons for its decision.
- 4.4 The Customer shall deliver to Airpro each given set of information and materials specified in the Specification or the Timetable on the date and at the place specified in the Specification or the Timetable.
- 4.5 The Customer agrees and acknowledges that Airpro gives no warranty or representation relating to availability of the Domain name the Customer wishes to acquire or register and Airpro accepts no liability whatsoever in respect of such proposed acquisition or registration being refused for reasons beyond its control.
- 4.6 Where a Domain name is acquired or registered on behalf of a Customer, such acquisition or registration and the use of the Domain name will be subject to the standard terms and conditions from time to time in force of the relevant naming authority. It is the Customer's responsibility to familiarise itself with those terms and conditions and the Customer shall indemnify and keep indemnified Airpro against any loss, damage, costs and liability for any breach of such terms and conditions.
- 4.7 It shall be the responsibility of the Customer to provide accurate information relating to the acquisition and registration of any Domain including without limitation the registrant's name or other contact details.

5. Construction of the Site

As from the Construction Commencement Date, Airpro shall commence the construction and development of the Domain on the basis of and in compliance with the Specification.

6. Delivery of the Site

- 6.1 Airpro shall use reasonable endeavours to deliver the Domain to the Customer by the date set out in the Timetable or as soon thereafter as reasonably possible.
- 6.2 Time shall not be of the essence for the completion of the construction for any given element of the Domain or for the delivery of the Domain to the Customer by the date set out in the Timetable and Airpro shall have no liability to the Customer for any failure on Airpro's part to do so by such dates.

7. Hosting of the Site

- 7.1 Following the Commencement Date, Airpro undertakes that subject to Clause 7.2

it will use its reasonable endeavours to perform the hosting services for the Customer.

- 7.2 The Customer acknowledges that Airpro relies on the Primary Hosting Service Provider to provide the holding services relating to the Domain and that the Charges reflect this arrangement. In the event that the Domain is subject to any disruption of service for any reason whatsoever, and only so far as is reasonably practicable in the circumstances, Airpro's obligations shall be limited to:

7.2.1 the enforcement, at Airpro's sole option, of the contractual terms between Airpro and the Primary Hosting Service Provider for the benefit of the Customer; and/or

7.2.2 consideration as to whether the Domain should be transferred to another Primary Hosting Service Provider and, if appropriate, in the sole opinion of Airpro, arrange for the transfer of the holding of the Domain to a new Primary Hosting Service Provider as soon as is reasonably practicable in the circumstances.

8. Modifications to the Site

- 8.1 Subject to Clause 8.2, Airpro shall, as soon as reasonably possible, amend, modify or replace any of the Content with such new material or replacement pages as may from time to time be supplied by the Customer to Airpro.
- 8.2 Airpro reserves the right to refuse to carry out such amendments, modifications or replacements where, in its absolute discretion such amendments, modifications or replacements are or are likely to be construed as being illegal, obscene, threatening, defamatory, discriminatory, promoting illegal or unlawful activity, or are otherwise actionable or in violation of any rules, regulations or laws to which the Website is subject. Airpro shall as soon as practicable notify the Customer in writing and state in reasonable detail, the reason for such refusal, and Airpro shall as soon as practicable at the request of the Customer attend a meeting for the purpose of discussing the matter further.
- 8.3 Save as provided in Clause 8.1, Airpro shall not amend, modify, replace or alter in any way any of the Website or the Content at any time without the prior written approval of the Customer.

9. Charges

- 9.1 The Charges payable for all services to be supplied by Airpro to the Customer in accordance with the Agreement are set out in the Particulars.
- 9.2 The Customer covenants with Airpro that it will pay each Charge specified in the Particulars.
- 9.3 All Charges specified in the Agreement are exclusive of any value added tax.
- 9.4 All Charges shall be payable to Airpro without any set off, deduction or any other form of withholding unless otherwise required by law.
- 9.5 If payment of any Charge is not made on the due date therefor Airpro shall be entitled, without prejudice to any other rights or remedies it might have, to charge interest on the outstanding amount and its costs in recovering such amounts in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 and/or withhold or where the provision of the Services has commenced, suspend the provision of Services to the Customer.

10. Warranties

- 10.1 The Customer acknowledges and accepts that websites and email services in general are not error, fault or bug free nor secure from persons wishing to misuse, tamper with, erase, alter or in any other way corrupt websites and email services and the data, information, records they display, retrieve, collate, transfer or disseminate and the Customer agrees with Airpro that subject to Clauses 10.2, 10.8 and 11.3, Airpro shall have no liability to the Customer nor to any other third party for any such occurrences arising in respect of or in relation to the Domain including for the avoidance of doubt, the failure to deliver or misdelivery of emails and the Customer shall indemnify and keep Airpro indemnified on a full indemnity basis from and against all Liabilities of Airpro arising from such occurrences and arising in respect of or in relation to the Domain. The Customer acknowledges and accepts that computers need routine maintenance and sometimes break down, Airpro cannot control the timing or volume of attempts to access the server, and that the hosting services are provided on an "as-is, as-available" basis. As a result, Airpro does not guarantee to anyone that the Customer or any third parties will be able to access the Domain at any particular time and the Customer agrees that Airpro shall have no liability to anyone if any such persons are not able to access the Site for any given period of time.

10.2 Subject to Clause 10.1, Airpro warrants that:

- 10.2.1 during the Warranty Period the Domain shall operate substantially in accordance with the Specification and the Technical Capabilities; and
- 10.2.2 it will perform all services to be provided to the Customer pursuant to the Agreement with reasonable care and skill
- 10.2.3 where it appoints a sub-contractor to perform the Services, it will use reasonable endeavours to pass on to that sub-contractor all instructions received from the Customer in relation to the Services .

10.3 No Warranty Claim may be made by the Customer pursuant to Clause 10.2 unless it is made by giving written notice to Airpro in the Warranty Period. Upon receipt of any valid Warranty Claim made during the Warranty Period, Airpro shall at its option either:

- 10.3.1 terminate the Agreement and refund an appropriate proportion of the Charges then paid by the Customer to Airpro; or
- 10.3.2 as soon as reasonably practicable use all reasonable endeavours to correct within a reasonable period of time by the provision of further services or replacement or additional Airpro's Input Material and any such amended or replacement software shall, unless it is third party software, become Airpro's Input Material.

10.4 Notwithstanding anything to the contrary set out in the Agreement, no Warranty Claim may be brought against Airpro and Airpro shall have no liability to the Customer to the extent that such Warranty Claim arises as a consequence of:

- 10.4.1 the improper use, operation or neglect of the Domain or the Software;
- 10.4.2 the modification of the Domain or the Software or their merger (in either whole or part) with any other software, WAP site or website which is not performed or authorised by Airpro under the Agreement;
- 10.4.3 the operation and hosting of the Domain other than on the Server;
- 10.4.4 the failure by the Customer within a reasonable period of time to implement recommendations in respect of or solutions to faults previously advised in writing by Airpro;
- 10.4.5 any repair, reconstruction, adjustment, alteration or modification of the Domain by any person other than Airpro without Airpro's prior written consent;
- 10.4.6 the Customer's failure to install in connection with the Domain or on the Server (as applicable) in substitution for the previous release any new release of the Software within 25 Working Days of receipt of the same;
- 10.4.7 the use of the Domain or the Software for a purpose for which they were not designed;
- 10.4.8 the use of the Domain or the Software to access, transfer or process data which was not created or transferred by the Software or otherwise anticipated by the parties in the Specification.

10.5 Subject to the limitations upon its liability in Clause 11 Airpro warrants that it has the right, power and authority to license the Software and Airpro's Input Material upon the terms and conditions of the Agreement.

10.6 The Customer shall give notice to Airpro as soon as it is reasonably able upon becoming aware of a breach of any warranty given by Airpro set out in the Agreement.

10.7 Subject to the foregoing, all conditions, warranties, terms and undertakings, express or implied, statutory or otherwise, in respect of the provision of the Site, the Software and the provision of all other services pursuant to the terms of the Agreement are hereby excluded to the fullest extent permitted by law.

11. Limitation of Liability

11.1 Notwithstanding anything to the contrary in these Terms and Conditions, Airpro's liability to the Customer for death or injury resulting from its own or its employees', agents' or sub-contractors' negligence shall not be limited.

11.2 Subject to Clause 11.1, Airpro's entire liability under this Agreement shall be limited to damages of an amount equal to 125% of the amount of the Charges (exclusive of VAT) paid by the Customer under the Agreement during the twelve month period commencing with the date as set out in the Particulars.

11.3 Subject to Clause 11.1, Airpro shall not be liable to the Customer in respect of any event of default for loss of profits, loss of data, goodwill or any type of special indirect or consequential loss (including loss or damage suffered by the Customer as a result of an action brought by a third party) even if such loss was reasonably foreseeable or Airpro had been advised of the possibility of the Customer incurring the same.

11.4 If at any time the Domain and the Software are used in conjunction with a server which has lower or different capability and characteristics regarding functionality and/or performance than the Server then Airpro shall not be liable for any losses arising from a failure or inadequacy of any of the Software or the Domain to achieve the requirements of the Specification arising directly or indirectly from that deficiency or difference.

11.5 The Customer hereby agrees to afford Airpro not less than 60 Working Days (following notification thereof by the Customer) in which to remedy any event of default hereunder.

11.6 Except under Clause 11.1, Airpro shall have no liability to the Customer unless the Customer shall have served notice upon Airpro within one month of the date it became aware of the consequences of such liability or the date when it ought reasonably to have become so aware.

12. Intellectual Property Rights

12.1 The Customer irrevocably agrees and acknowledges with Airpro that all existing and future Intellectual Property Rights in respect of or relating to the Domain will at all times during the continuance and following the termination of the Agreement vest absolutely in Airpro and that the Customer shall not be permitted to use such Intellectual Property Rights otherwise than pursuant to the express terms and conditions of this Clause.

12.2 Airpro grants to the Customer a non-exclusive, non-transferable licence to use Airpro's Input Material for the Permitted Use only during the period commencing on the Live Date and ending on the Termination Date.

12.3 The Customer agrees with Airpro that it shall not:

- 12.3.1 save as permitted in these Terms and Conditions make copies of Airpro's Input Material;
- 12.3.2 save solely for the purposes expressly permitted by and in accordance with s.296A(1) CDDA and s.50B(2) CDDA copy, adapt or decompile the whole or any part of Airpro's Input Material and in the event that such decompilation or copying is carried out by the other party pursuant to s.296(A)(1) or s.50B(2) CDDA all rights in any resultant source code shall belong exclusively to Airpro;
- 12.3.3 assign, transfer, sell, lease, rent, charge, or hold Airpro's Input Material in trust for any third party or otherwise deal in or encumber Airpro's Input Material or use Airpro's Input Material on behalf of any third party or make available the same to any third party;
- 12.3.4 remove or alter any copyright, trade mark or other proprietary notice or mark on any of Airpro's Input Material, (whether visible to WWW Users or not);
- 12.3.5 provide nor make available to any third party whether as a gift or for any consideration of any sort any information or knowledge of which it is informed or which it deduces about or relating to Airpro's Input Material; or
- 12.3.6 permit any other person to utilise the Site for the purposes of any such other person's business).

12.4 The Customer agrees with Airpro that it shall:

- 12.4.1 subject to Clause 12.1, keep confidential Airpro's Input Material save for those parts of Airpro's Input Material which are visible to WWW Users or are trivial, obvious or which came into the public domain or the possession of the Customer otherwise than by breach of obligations of confidentiality;
- 12.4.2 reproduce on any copy (whether in machine-readable or human-readable form) of Airpro's Input Materials the other party's copyright and trade mark notices;
- 12.4.3 maintain an up-to-date written record of the number of copies of Airpro's Input Material and their location and upon request forthwith produce such record to Airpro;
- 12.4.4 notify Airpro immediately if the Customer becomes aware of any unauthorised use of the whole or any part of Airpro's Input Material by any third party; and
- 12.4.5 without prejudice to the foregoing take all such other reasonable steps as shall from time to time be necessary to protect the confidential information and Intellectual Property Rights of Airpro in Airpro's Input Material.

12.5 The Customer shall inform all relevant employees, agents and sub-contractors that Airpro's Input Material constitutes confidential information of Airpro and that all Intellectual Property Rights therein are the property of Airpro and shall

take all reasonable steps as shall be necessary to ensure compliance by its employees, agents and sub-contractors with the provisions of Clause 12.4.

- 12.6 Save as expressly included in the Permitted Use the Customer shall not be entitled to copy in whole or in part Airpro's Input Material and shall ensure where copying is authorised it only copies such Input Material to the extent necessary for the performance of its obligations hereunder.
- 12.7 Airpro will indemnify and hold harmless the Customer on an indemnity basis only against any damages (including costs) that may be awarded or payable by the Customer to any third party in respect of any claim or action that the use of Airpro's Input Material in accordance with the provisions of the Agreement by the Customer infringes the Intellectual Property Rights of any third party provided that the Customer:
- 12.7.1 gives notice to Airpro of any such suspected Intellectual Property Rights infringement forthwith upon becoming aware of the same;
- 12.7.2 gives Airpro the sole conduct of the defence to any claim or action in respect of an Intellectual Property Rights infringement and does not at any time admit liability or otherwise settle or compromise or attempt to settle or compromise the said claim or action except upon the express instructions of Airpro; and
- 12.7.3 acts in accordance with the reasonable instructions of Airpro and gives to Airpro such assistance as it shall reasonably require in respect of the conduct of the said defence including without prejudice to the generality of the foregoing the filing of all pleadings and other court process and the provision of all relevant documents.
- 12.8 Airpro shall reimburse the Customer its reasonable costs properly incurred in complying with the provisions of Clause 12.7.
- 12.9 Airpro shall not have any liability to the Customer in respect of an Intellectual Property Rights infringement if the same results from any breach of the Customer's obligations under the Agreement.
- 12.10 In the event of there being an Intellectual Property Rights infringement in respect of the use of Airpro's Input Material, Airpro shall be entitled at its own expense and option either to:
- 12.10.1 procure the right for the Customer to continue using Airpro's Input Material; or
- 12.10.2 make alterations, modifications or adjustments to Airpro's Input Materials so that they become non-infringing without incurring a material diminution in performance or functionality from the Specification; or
- 12.10.3 replace Airpro's Input Material with non-infringing substitutes provided that such substitutes do not entail a material diminution in performance or functionality from the Specification and each party shall immediately co-operate in the implementation of any such amendments.
- 12.11 If Airpro in its reasonable judgement is not able to exercise any of the options set out in Clause 12.10 within one month of the date it receives notice of an Intellectual Property Rights infringement, then the Customer without prejudice to any other rights or remedies it may have hereunder or at law, shall be entitled to terminate the Agreement by 10 Working Days notice upon Airpro.

13. Risk

Risk of the loss of any Documents supplied by Airpro to the Customer pursuant to the Agreement will pass to the Customer upon the date such items are delivered to the Customer in accordance with the provisions of these Terms and Conditions. If subsequently any such materials are (in whole or part) destroyed, damaged or lost, Airpro will upon request replace the same subject to the Customer paying Airpro's then prevailing charges, but the Customer acknowledges that it shall not be entitled to any new or extended warranty from Airpro in respect of such replaced materials.

14. Customer's Warranties and Liabilities

The Customer represents, warrants, undertakes and agrees with the Airpro as follows:

- 14.1 the Customer shall indemnify Airpro and keep Airpro at all times fully indemnified from and against all actions proceedings claims demands costs (including without prejudice to the generality of this provision the legal costs of Airpro on a solicitor and own client basis) and other liabilities however arising directly or indirectly as a result of any breach or non-performance by the Customer of any Customer's undertakings covenants warranties or obligations under the Agreement;
- 14.2 the Customer will ensure that the Content will at all times during the continuance of the Agreement comply with all such laws, rules, codes of practices and regulations and will not be defamatory, obscene, blasphemous or be in breach of any other applicable laws, statutes, regulations or rules of any other

governmental, regulatory or other authority;

- 14.3 the warranties contained in this Clause 14 shall remain in full force and effect after the Live Date for the continuance of the Agreement;
- 14.4 the Content will only include, incorporate, display and make accessible to WWW Users (whether by visual, audio or other means) images, displays, menus, pages, sounds, data and sensations approved in writing by Airpro;
- 14.5 that it will keep safe and secure any identification, password or any other information relating to the provision of the Services and to notify Airpro immediately of any suspected unauthorised use of such identification or password by any third party;
- 14.6 where the Customer is administering a Domain on Airpro's server for its own customer, the Customer shall indemnify Airpro and keep indemnified against an loss, damages or liability it suffers as a result of such use of the Airpro equipment;
- 14.7 where the Customer is administering a Domain on Airpro's server for its own customer not to exceed any bandwidth or data allowances as agreed between Airpro and the Customer and the Customer agrees to be liable to additional charges for exceeding such limits, such charges to be notified to the Customer and payment of which shall be in accordance with these Terms and Conditions.
- 14.8 where the Customer is administering a Domain on Airpro's server for its own customer, it shall at all times ensure that the Domain is not used for any purposes which are or are likely to be construed as being illegal, obscene, threatening, defamatory, discriminatory, promoting illegal or unlawful activity, or are otherwise actionable or in violation of any applicable rules, regulations or laws or in any manner which is prejudicial to the interests of Airpro

15. Confidentiality

- 15.1 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 as a result of the discussions leading up to or entering into the Agreement save that which is:
- 15.1.1 trivial or obvious;
- 15.1.2 already in its possession other than as a result of a breach of this Clause;
- 15.1.3 in the public domain other than as a result of a breach of this Clause; or
- 15.1.4 concepts and ideas created by the Customer which are subsequently incorporated by Airpro in the Site, whether or not such are visible to WWW Users, even if the parties have previously signed a confidentiality agreement with regard to such concepts and ideas.
- 15.2 Each of the parties undertakes to the other to take all such reasonable steps as shall from time to time be necessary to ensure compliance with the provisions of Clause 18.1 by its employees agents and sub-contractors.

16. Termination

- 16.1 The Agreement may be terminated by either party pursuant to Clause 3.
- 16.2 The Agreement may be terminated forthwith by Airpro giving written notice to the Customer if:
- 16.2.1 the Customer fails by the due date therefor to pay any of the Charges in accordance with the provisions of the Agreement;
- 16.2.2 at any time the Customer sells or disposes of in any way the whole or any substantial part of its business by one or a series of transactions;
- 16.2.3 a voluntary agreement is approved, or an administration order is made, or a receiver, liquidator or administrative receiver is appointed over or in respect of any of the Customer's assets or undertaking or a resolution or petition to wind up the Customer is passed or presented (other than for the purpose of amalgamation or reconstruction) or if any circumstances arise which entitle a court or a creditor to appoint a receiver, liquidator or administrative receiver or to present a winding-up petition or make a winding-up order or the Customer goes into administration;
- 16.2.4 if at any time control (as defined in s840 of the Income and Corporation Taxes Act 1988) of the Customer is acquired by any person or group of connected persons (as defined in s839 of that Act) not having control of the Customer at the date of the Agreement, in which case the Customer shall forthwith give written notice to Airpro identifying that person or group of connected persons.
- 16.3 The Agreement may be terminated forthwith by either party giving written notice to the other if the other commits any material breach of any terms of the Agreement or fails to perform any material obligations on its part under the

Agreement and (if the breach is capable of remedy) fails to fully remedy the same within 30 Working Days of receipt of a written notice to remedy the same.

16.4 In the event of termination in accordance with this Clause 16 Airpro shall, without prejudice to any other rights or remedies it may have against the Customer retain all sums of money paid pursuant to the Agreement.

16.5 Any termination of the Agreement pursuant to this Clause 16 or otherwise shall:

16.5.1 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;

16.5.2 not operate to terminate either party's obligations which shall continue in full force following the Termination Date.

16.6 Within 30 Working Days of the termination of the Agreement (howsoever and by whomsoever occasioned) the Customer shall at the sole option of Airpro either return all copies of Airpro Software, the Software and Airpro's Intellectual Property Rights in the Site in its possession or control or shall destroy all copies of the same and the Customer shall certify in writing to Airpro that the Customer has complied with its obligation as aforesaid.

17. Force Majeure

17.1 Neither party hereto shall be liable for any breach of its obligations hereunder resulting from an Event of Force Majeure, subject to the defaulting party using its best endeavours to remedy the Event of Force Majeure and continuing to perform its obligations.

17.2 If a default due to an Event of Force Majeure shall continue for more than 20 Working Days then the party not in default shall be entitled to terminate the Agreement at any time after such 20 Working Day period and before the Event of Force Majeure ceases. Neither party shall have any liability to the other in respect of the termination of the Agreement as a result of an Event of Force Majeure.

18. Assignment, sub-licensing and third party rights

18.1 The Customer shall not be entitled to assign or otherwise transfer the Agreement nor any of its rights or obligations hereunder, sub-license the right to use Airpro's Input Materials or any of Airpro's Intellectual Property Rights or hold the benefit of the Agreement in trust for any other person without the prior written consent of Airpro.

18.2 Airpro shall be entitled to delegate any of its obligations under the Agreement. Any such delegation shall not affect the obligations and liability of Airpro under the Agreement.

18.3 The parties agree and intend that nothing in the Agreement shall confer any rights or benefits on any third parties.

19. General

19.1 The waiver by either party of a breach or default of any of the provisions of the Agreement by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions of the Agreement 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.

19.2 Any notice to be given hereunder shall be delivered or sent by first class post or by fax (such fax notice to be confirmed by letter posted within 12 hours) to the address or to the fax number of the other party set out in the Particulars (or such other address or number as may have been notified) and any such notice or other document shall be deemed to have been served (if delivered) at the time of delivery (if sent by post) upon the expiration of 48 hours after posting and (if sent by fax) upon the expiration of 12 hours after despatch.

19.3 If any provision of these Terms and Conditions shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable then all provisions not affected by such invalidity or enforceability shall remain in full force and effect.

19.4 The Customer acknowledges that in entering into the Agreement it has not relied on any warranty, representation or undertaking other than those contained or referred to in the Agreement. The Customer waives any right or remedy it may have to claim damages or rescission for any misrepresentation in respect of any representation not contained in these Terms and Conditions or for breach of any warranty not contained in these Terms and Conditions and acknowledges that its only remedies against Airpro are for breach of contract provided always that nothing in this Clause 19.4 shall exclude or limit Airpro's liability to the Customer in respect of any fraudulent misrepresentation or warranty fraudulently given upon which the Customer has placed reliance. Subject to the foregoing, the

Agreement and the documents referred to herein constitute the entire agreement and understanding between the parties with respect to all the matters referred to in these Terms and Conditions.

19.4 Time shall not be of the essence for the performance by Airpro of any of its obligations hereunder and Airpro shall not incur any liability to the Customer in respect of any failure to complete any of the phases of the construction, design and development of the Site by the dates specified therefor in the Timetable.

19.5 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.

19.6 The parties agree that nothing in the Agreement shall be deemed to create any partnership between them.

19.7 The 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.