Advanced Cloud Invoicing is offered via CLOUD TRADE TECHNOLOGIES LIMITED registered in England and Wales under company number 04967920, who are sub-contractor to ABS.

1. DEFINITIONS

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

"Charges and Fees" means the combined charges and fees agreed separately.

"Confidential Information" means the terms of this Agreement and all information (including without limitation rates of commission) (whether written or otherwise and no matter in what form or medium held) concerning the business and affairs of any party which is obtained or received by another party as a result of the discussions leading up to, the entering into or the performance of this Agreement and which should reasonably be regarded as being confidential information of the first party.

"Commencement Date" means the date of execution of this Agreement.

"Commercially Sensitive Information" means the subset of Confidential Information that the parties agree from time to time constitutes information which is a trade secret including but not limited to Invoice Data;

 "Data Protection Legislation" means the Invoice Protection Act 1998 and any subordinate legislation under that Act, the The Privacy and Electronic Communications (EC Directive) Regulations 2003 or any subsequent enactment or supplementary legislation.

"E-Invoice Transmission" means the transmission of an electronic invoice to the Client.

"Environmental Information Regulations" means the Environmental Information Regulations 2004.

"Force Majeure" means, in relation to either party, any circumstances beyond the reasonable control of that party which has a material adverse effect on its ability to perform its obligations under this Agreement, including, any act of God, war, riot, civil commotion, fire, explosion, flood, adverse weather, epidemic, or other natural physical disaster, or any form of government or supra-national authority intervention.

"Cloud Invoice System" means the electronic invoicing system used to provide data capture capabilities for CTT Customers.

"Information" has the meaning given under section 84 of FOIA.

"Invoice" or "Invoice Data" means the Client's information which is provided on or via the Cloud Invoice System or processing by the Cloud Invoice System.

"Term Sheet" means the terms set out in Schedule 1.

"XML Invoice Transmission" means the transmission of an Invoice in an agreed XML format to the Client.

2. OBLIGATIONS AND LIMITED LICENCE: WARRANTIES

2.1 CTT grants to the Client a non-exclusive, non-transferable licence to access (via authentication credentials to be provided to the Client) portions of the Cloud Invoice System relating to the capture of invoice data, the mapping of the invoice data to output data items and the transmission of the invoice data, provided that this licence does not permit the Client to and the Client may not:

    2.1.1 copy the Cloud Invoice System;

    2.1.2 use the Cloud Invoice System except in connection with processing and receipt of Invoice Data; or

    2.1.3 sub-license or grant to any third party any right to use or gain access to the Cloud Invoice System.

2.2 CTT warrants that it is the owner of or is an authorised licensee of all software it uses to host and to run the Cloud Invoice System and that it is authorised to enter into and grant the limited licence provided to the Client pursuant to clause 2.1 above.

2.3 CTT shall establish the security architecture and protocols as published on the Cloud Invoice System from time to time, and shall properly maintain and repair, as necessary, the Cloud Invoice System but shall not have any other responsibilities or liability with respect to security for the Cloud Invoice System.

2.4 CTT will process the Invoice Data as described in the Term Sheet, such that it is made available using the Cloud Invoice System, subject to the limitations set out in clause 3 below.

2.5 CTT may choose entirely at its own discretion not to process any Invoice or Invoice Data.

3. SUPPLY OF INVOICE AND INVOICE DATA

3.1 The Client grants to CTT a non-exclusive licence to copy, load and process the Invoice Data on the Cloud Invoice System.

3.2 The Client warrants to CTT that it has the right to provide the Invoice or Invoice Data and the licences referred to in this clause 3 and that the use of such Data and other materials under the terms of the licences will not infringe any intellectual property rights or any other rights of any third party.

3.3 The Client warrants to CTT that copying the Invoice and processing the Invoice Data as contemplated by this Agreement does not infringe any third party rights, including, without limitation, any copyrights, trademarks, patents, database rights, trade secret rights or duty of confidentiality.

3.4 In relation to its use of the Cloud Invoice System, the Client shall:

    3.4.1 use up to date virus checking software to ensure that it does not introduce any virus onto the Cloud Invoice System by way of the Invoice or Invoice Data or otherwise;

    3.4.2 not knowingly or recklessly interfere or disrupt, or attempt to interfere or disrupt, the Cloud Invoice System, any transactions being offered at the Cloud Invoice System or any networks connected to the Cloud Invoice System;

    3.4.3 not knowingly take any action that imposes an unreasonable or disproportionately large load on the Cloud Invoice System;

    3.4.4 not use the Cloud Invoice System to collect or harvest personal data (as defined in the Data Protection Legislation) relating to other individuals accessing the Cloud Invoice System except to the extent that such information is required for the processing of Invoices;

    3.4.5 not post any misleading, fraudulent, defamatory, obscene or otherwise illegal information on the Cloud Invoice System;

    3.4.6 not use the Cloud Invoice System for illegal purposes;

    3.4.7 comply with all laws and all regulations, policies and procedures which relate to the Cloud Invoice System; and

    3.4.8 promptly notify CTT if it has a material complaint relating to the Cloud Invoice System.

3.5 CTT reserves the right to terminate the processing of the Invoice or Invoice Data if the Client is in breach of any of its obligations under this Agreement.

3.6 CTT may use the Client's name and refer to the existence of this Agreement in any marketing material or public announcement relating to the Cloud Invoice System. CTT agrees that all other promotional uses of the trademarks and logos of the Client shall be subject to the Client's prior review and approval, such approval not to be unreasonably withheld or delayed.

4. DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY

4.1 No party limits its liability for death or personal injury resulting from its negligence or for its fraudulent misrepresentation or deceit.

4.2 Except for CTT's warranties expressly set forth in this Agreement, CTT makes no other express or implied warranties or representations regarding the performance, functionality or content of the Cloud Invoice System, including implied warranties of merchantability, accuracy and fitness for a particular purpose in relation to the Cloud Invoice System, its use, or the results of use, and CTT disclaims any warranty that the Cloud Invoice System will be available on an uninterrupted or error-free basis or that there are no viruses or other harmful components within such system and there is no warranty against interference with the enjoyment of the information or against infringement.

4.3   Subject to clause 4.1, CTT shall not be liable to the Client for any loss of business, loss or corruption of data, loss of goodwill, loss of profits, loss of contract, or indirect or consequential loss of any kind arising out of or in connection with this Agreement, even if such loss was reasonably foreseeable.

4.4   Subject to clause 4.1, CTT's total aggregate liability to Client for any loss or damage arising out of or in connection with this Agreement however arising, whether in contract, in tort (including negligence), under a warranty or an indemnity, under statute for breach of statutory duty or otherwise shall be limited to the total Charges and Fees paid or payable by the Client in the previous one year period.

4.5   Save as provided in this Agreement, all warranties, terms and undertakings, express or implied, statutory or otherwise are excluded to the fullest extent permitted by law.

4.6   No party shall be liable for any failure or delay in complying with its obligations under this Agreement caused by a Force Majeure event. Any party claiming the benefit of this clause 4.6 shall notify the other parties in writing of the reasons of such an event (and the likely duration) promptly after the occurrence of the same and shall use its reasonable endeavours to minimise the effect and duration of such event.

5.   CONFIDENTIALITY

5.1   Each of CTT and the Client shall not disclose, without the express written consent of the other, to any third party Confidential Information except:

5.1.1   where it was already lawfully known, or became lawfully known, to the relevant third party independently; or

5.1.2   where it is in, or comes into, the public domain other than through a breach of any of the terms of this Agreement; or

5.1.3   where disclosure is required by applicable laws or to a taxation authority; or

5.1.4   where the disclosure is to those persons engaged by it in connection with the Service to the extent that the disclosure is reasonably required.

5.2   The Client acknowledges the nature of the Internet and the capabilities of "hackers" and agrees that CTT shall not be responsible for any loss or corruption of data or disclosure of data caused by an unauthorised third party, provided CTT has put in place, operates and maintains, in a commercially reasonable manner, as documented in CTT security policies.

6.   TERM AND TERMINATION

6.1   The term of this Agreement shall be as set out in Schedule 1 and, unless terminated earlier, shall be automatically renewed on the same basis for successive one (1) year terms upon the expiration of the previous term.

6.2   Any party may terminate this Agreement with respect to another party at any time on written notice with immediate effect if:

6.2.1   in relation to that other, an order is made by a court of competent jurisdiction, or a resolution is passed, for the dissolution or administration of that party (other than in the course of a bona fide scheme of solvent reorganisation or restructuring);

6.2.2   in relation to that other, any step is taken (and not withdrawn within thirty (30) days) to appoint a manager, receiver, administrative receiver, administrator, trustee or other similar officer in respect of all or part of its business or assets;

6.2.3   that other convenes a meeting of its creditors or makes or proposes any arrangement or composition with, or any assignment for the benefit of, its creditors; or

6.2.4   that other commits a material breach of this Agreement and (if capable of remedy) fails to remedy the same (or establish plans to remedy the same in a manner satisfactory to the non-defaulting party) within a reasonable period (being not less than thirty (30) days in any event) of notice to do so being given by the other party (and in which such other party expresses its intention to exercise its rights under this clause).

6.3   The parties may terminate this Agreement with or without cause upon no less than 120 days' prior written notice to the others.

6.4   Upon termination, CTT will delete the Invoice Data from the Cloud Invoice System, delete all authentication credentials, and discontinue any use or display of the Client's trademarks, service marks and/or logos, and upon termination, CTT shall have no further obligation to transfer Invoices.

6.5   Termination of this Agreement 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 continuation 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. In particular, following termination the Client shall remain responsible for making the payments of any outstanding Charges and Fees due.

7.   DATA PROTECTION

7.1   Each of the Client and CTT shall comply with its obligations under the Data Protection Legislation and shall co-operate with the other as is reasonably required so as to enable the other party to comply with its obligations under that legislation.

7.2   The Client shall be responsible for identifying any personal data provided by the Client to CTT in the course of this Agreement and shall be responsible for obtaining any consents in respect of such data which are required to enable CTT to process the Invoice as envisaged by this Agreement.

7.3   Where CTT acts as a data processor (as defined in the Data Protection Legislation) of personal data on behalf of the Client as a data controller (as defined in the Invoice Protection Legislation) CTT shall:

    7.3.1   act only on and comply with the instructions of the Client in relation to such personal data; and

    7.3.2   take appropriate technical and organisational measures against unauthorised or unlawful processing of such data and against accidental loss of or damage to such personal data.

8. INDEMNIFICATION

8.1   The Client shall defend, indemnify hold harmless and keep indemnified (on an after tax basis) CTT and their sub-contractors, subsidiaries, affiliates and the directors, offices, employees, agents and shareholders of CTT their subsidiaries and affiliates against any and all claims, actions, demands, liabilities, losses and expenses resulting from or arising out of or in connection with (i) the inclusion of the Invoice or Invoice Data on Cloud Invoice System; (ii) the Client's use of Cloud Invoice System.

9. INTELLECTUAL PROPERTY RIGHTS

9.1   The Client acknowledges that, save as otherwise provided in this Agreement, as between CTT and the Client, all copyright and other intellectual property rights whatsoever in the Cloud Invoice System and any related software (and any amendment or enhancement thereto) shall remain the property of CTT.

9.2   Except as expressly provided in this Agreement, as permitted by law or with the written consent of CTT, the Client is not permitted to copy, transfer, modify, decompile or create derivative works from the Cloud Invoice System and/or any related software for any purpose whatsoever.

10. ASSIGNMENT AND SUB-CONTRACTING

10.1   No Party shall be entitled to and shall not assign, novate or otherwise transfer this Agreement, in whole or in part, without the other Parties' prior written consent (such consent not to be unreasonably withheld, delayed or conditioned).

10.2   CTT may sub-contract any of its rights and obligations under this Agreement. Consent to any such subcontracting will not relieve CTT of its obligations under this Agreement and CTT will be fully responsible for the acts or omissions of its contractors and their employees.

11. GENERAL

11.1   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 any other provisions.

11.2   Any delay or omission on the part of either party to exercise or avail itself of any right, power or provision that it has or may have hereunder shall not operate as a waiver of that right or power or of any breach or default by the other party.

11.3   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 provisions 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.

11.4   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 provisions.

11.5   Nothing in this Agreement shall exclude or restrict liability for misrepresentations fraudulently made or any other liability that cannot be exercised at law.

11.6   No alteration to the terms of this Agreement may be made without the express written Agreement of the parties.

11.7   Unless expressly stated nothing in this Agreement or any Agreement referred to herein will create rights pursuant to the Contracts (Rights of Third Parties) Act 1999 in favouring anyone other than parties to this Agreement.

11.8   This Agreement does not create and shall not in any circumstances create or be deemed to create a legal partnership between the parties hereto.

11.9   This Agreement may be executed in any number of counterparts and by the parties to it on separate counterparts, each of which when so executed and delivered shall be an original, but all the counterparts shall together constitute one and the same instrument.

11.10   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.

PART A – Services

1.   Description

Cloud Invoice is a means by which invoice text files are converted into XML invoices. The invoices are received directly from the suppliers' source billing systems in to a pre-configured email address. The data is identified, automatically extracted and then routed to the Client:

- Received documents (Invoices) that are successfully processed are sent to the Client in a format as agreed during service set-up. The original document is left in the received email inbox marked as "read", to be archived as instructed (in writing) by the Client. No other copy of the received Invoice is retained

- Received documents which cannot be converted are either returned to the sender or sent to the Client unprocessed, as determined in advance by service configuration agreed by the Client

2.   Reports

Cloud Invoice provides a number of activity reports:

- Daily summary of invoices processed for a buyer. This is sent to a pre-configured email address as instructed by the Client

3.   Service Levels

The service is available between 07:00 – 20:00 Monday to Saturday, CET. Invoices received during these hours will be processed within thirty (30) minutes. Invoices received outside of these hours may be queued and processed when the service hours resume.

Issue Resolution

Cloud Invoice is configured to process automatically the vast majority of invoices. However there will be a small number of invoices where Cloud Invoice is unable to capture all required data in the first instance. When this happens, CTT support personnel will be informed. Failure-to-capture issues will be investigated within one working day, so that the invoice is either:

- Successfully processed and sent to the Client in the usual way; or
- Forwarded to the sender or Client for manual processing

Supplier Set Up

When the Client wishes to introduce a new supplier to the service, CTT will configure the service to process invoices from the new supplier within five days of receipt of test invoices. The Client will be given the opportunity to see the results of the supplier set up within a test environment. Once approved, the supplier configuration will be moved to live within two days of request.

Support Details

Telephone support is available during support hours: 09:30 – 17:30 Monday to Friday (excluding UK bank holidays). Support queries can be sent to CTT by email (support@cloudtrade.co.uk) at any time and will be responded to during the next working day.