

PARTIES

1. **TOTAL ESCROW SOLUTIONS PLC** (Company Number: 6567576) whose registered office is at St Crispin House, St Crispin Way, Hasslingden. Rossendale. Lancashire. BB4 4PW (**'TES'**)

2. [] (Company Number []) whose registered office is at [] (**'the Licensor'**)

RECITALS

- (A) The Licensor has granted a licence to the Licensee to use in object code form only certain computer software programs and has agreed to provide technical support in respect of the same upon the terms and conditions of a licence (and a technical support agreement).
- (B) The software programs and associated documentation contains or is confidential information and is the intellectual property of the Licensor and/or a third party.
- (C) Such confidential information and documentation may in certain circumstances be required by the Licensee in order for the Licensee to enjoy and exercise the rights granted pursuant to the Licence.
- (D) The Licensor has agreed to deposit the source code version of the computer software programs referred to in (A) above with TES and has authorised TES to release the same to the Licensee in the circumstances and subject to the terms and conditions of this agreement.
- (E) TES has agreed to carry out Integrity Testing on all Licensed Programs and the Licensee and/or Licensor may request TES to carry out further levels of testing and certification as may be required at the appropriate cost.

OPERATIVE PROVISIONS

1 Definitions

1.1 In this agreement unless the context otherwise requires:

'Agreement' means this agreement;

'Certification Testing' means the tests processes and examinations comprising the certification testing service provided by TES and/or such other testing and verification processes agreed between the parties for the testing and verification of Licensed Programs and Source Code;

'Confirmation Agreement' means the form of Confirmation Agreement set out in the Fourth Schedule;

'Confidential Information' means the material and all technical and/or commercial information not in the public domain together with any information designated in writing by the party disclosing it to be confidential and all other information which a party would reasonably regard as confidential information;

'Default' means any breach of the obligations of TES or any default act omission negligence or statement of TES, its employees, agents or sub-contractors in connection with or in relation to the subject matter of this agreement in respect of which TES is liable to the Licensor or the Licensee;

'Independent Expert' means an independent barrister or solicitor of suitable qualification and experience;

'Integrity Testing' means a basic form of testing on the Material to confirm that:

- (1) the same contains Source code, is readable, free from virus and that encryption and/or passwords may be accessed;
- (2) that the Source Code file size corresponds with that represented by the Licensor.

'Intellectual Property Rights' means:

- (a) Patents, trade marks, copyright rights in designs, inventions, database rights, confidential information, moral rights, trade or business names, technical information, know how, domain names;
- (b) applications for any of the rights in (a) above together with the right to apply for registration of such rights;

- (c) all other proprietary rights and knowledge and/or information of whatever nature and howsoever arising;

'Licence Agreement' means the licence agreement made between the Licensor and Licensee under which the Licensee is authorised to use the Licensed Programs;

'Licensed Programs' means the software programs identified in the Licence Agreement (and Technical Support Agreement) together with any subsequent versions and/or updates and modifications similarly authorized as described in the First Schedule;

'Licensee' means any person company or firm or entity:

1. to whom the Licensor has granted a Licence to use the Material;
2. who has been authorised by the Licensor to be registered by TES under this Agreement;
3. who has executed the form of confirmation agreement, returned the same to TES and the receipt and registration of which has been acknowledged in writing by TES;

'Material' means the Source Code Licensed Programs and such other documents and material including updates, new versions and upgrades as are necessary to comply with Clause 2;

'Register' means the Register kept by TES referred to in clause 3.6;

'Source Code' means the source code version of the Licensed Programs including any modification enhancement revision or update thereto that may be made from time to time by TES;

'Technical Support Agreement' means the technical support agreement made between the Licensor and Licensee pursuant to which the Licensee receives technical support of the Licensed Programs and any subsequent such agreement;

'Third Party Material' means source code and material which is not the intellectual property or confidential information in the ownership of the Licensor or the Licensee;

2 Deposit of source code

- 2.1 Within 30 days of the date of execution of this Agreement the Licensor will deposit with TES at the address stated in this Agreement as the registered office of TES or such other address as it shall from time to time in writing indicate to the Licensor two copies of the Material.
- 2.2 Within 30 days of the date of any modification enhancement revision or update to the Licensed Programs the Licensor will deposit with TES two revised copies of the whole (or the relevant part) of the Material incorporating such modification enhancement revision or update (as the case may be).
- 2.3 Within 30 days of each anniversary of the date of execution of this agreement the Licensor will deposit with TES two replacement copies of the Material then deposited. Upon receipt of the replacement copies TES will return to the Licensor the previously deposited copy of the Material.
- 2.4 Within 14 days of written notice to do so from TES the Licensor shall deliver two replacement copies of the Material to TES in the event that the whole or any part of the copy Material held by TES has been lost, damaged or destroyed.
- 2.5 With each copy of the Material the Licensor shall deliver:
 - 2.5.1 the full current (and previous) name and description of the Licensed Programs and Material together with all version details, operating system details and hardware backup software;
 - 2.5.2 the full password and encryption details necessary to obtain access to the Material;
 - 2.5.3 (where applicable) all documentation which sets out the methods and procedures for constructing, compiling and installing the Licensed Programs including the names and operating versions of any development tools;
 - 2.5.4 all software design information including module names and functionality;
 - 2.5.5 the name and contact details of all employees who have the required knowledge and expertise to support and maintain the Material; and
 - 2.5.6 if so required by the Licensee deposit a copy of the object code.

3 Custody of material and Register

- 3.1 Forthwith upon receipt of the Material (whether pursuant to clauses 2.1, 2.2, 2.3 or 2.4 above or clause 10.2 below) TES shall:

- 3.1.1 place the same in storage in a safe and secure environment in accordance with its standard procedures; and
- 3.1.2 send written confirmation of receipt and storage respectively to the Licensor and Licensee.
- 3.2 TES shall give notice to the Licensor and Licensee upon becoming aware that any copy of the Material held by TES has been lost, damaged or destroyed.
- 3.3 TES shall not be responsible to ensure that the Licensor shall further deposit a copy of the Material in the event of loss, damage or destruction of the same and may notify the Licensee of the failure of the Licensor to deposit such Material.
- 3.4 TES shall be permitted to appoint agents, contractors or subcontractors to carry out any Certification Testing the Licensed Programs and/or Source Code provided that TES shall procure that such agents, contractors and subcontractors are bound by the same confidentiality obligations as are given by TES in clause 6.1.2.
- 3.5 TES shall be entitled to make such copies of the Material as are required for the purposes of performing its obligations under this Agreement.
- 3.6 TES shall establish (and as necessary update) a register of all Licensees who have returned to TES the executed Confirmation Agreement.
- 3.7 The Register shall contain the name, address, telephone number and designated representative of each Licensee.
- 3.8 The Licensor shall notify TES promptly in writing of any change in the details at 3.7.
- 3.9 TES shall provide to the Licensor a copy of the Register for its retention and use and shall register additions, deletions or updates of the same by each addition, deletion or update notified by the Licensor.
- 3.10 Each Licensee shall become a party to this Agreement upon receipt by the Licensee of Confirmation of the registration by TES of the Licensee's details upon the Register.

4 Release of Material

- 4.1 A 'Relevant Event' shall have occurred for the purpose of this clause if:
 - 4.1.1 where the Licensor is a company:
 - 4.1.1.1 it is unable or admits its inability to pay its debts when they become due (within the circumstances specified in Section 123 of the Insolvency Act 1986);
 - 4.1.1.2 it summons a meeting of its creditors or a proposal is made for a voluntary arrangement under Part I of the Insolvency Act 1986 or it enters into a scheme of arrangement with its creditors in satisfaction or composition of its debts;
 - 4.1.1.3 an application for an administration order is made or notice of appointment of an administrator is filed at court;
 - 4.1.1.4 a receiver or manager (including an administrative receiver) is appointed whether under Part III of the Act or under the Law of Property Act 1925 or otherwise;
 - 4.1.1.5 a resolution or determination to wind-up is passed or made or a provisional liquidator is appointed or a winding-up order is made under Part IV of the Insolvency Act 1986 (save that in the case of a voluntary winding-up solely for the purpose of solvent amalgamation or solvent reconstruction);
 - 4.1.1.6 a proposal is made for a scheme of arrangement under Section 425 of the Companies Act 1985;
 - 4.1.1.7 it is the subject of a successful notice issued to strike-off the Register at Companies House; or
 - 4.1.1.8 it is dissolved.
 - 4.1.2 Where the Licensor is an individual that:
 - 4.1.2.1 an application is made for an interim order or a proposal is made for a voluntary arrangement under Part VIII of the Insolvency Act 1986;
 - 4.1.2.2 the Licensor is declared bankrupt;
 - 4.1.2.3 the Licensor enters into a deed of arrangement or composition with his creditors;
 - 4.1.2.4 a receiver is appointed under the Mental Health Act 1983 or the individual becomes incapable of managing his affairs; or
 - 4.1.2.5 the individual dies.

- 4.1.3 Where the Licensor is a partnership that:
 - 4.1.3.1 it enters into a voluntary arrangement under Part II of the Insolvent Partnerships Order 1994;
 - 4.1.3.2 an application for an administration order is made or notice of appointment of an administrator is filed at court;
 - 4.1.3.3 the Licensor is dissolved or wound up; or
 - 4.1.3.4 any of the partners is declared bankrupt or enters into a compromise or voluntary arrangement with creditors of any third party Licensed Programs or software which is necessary to access, build, compile, install or use the Material.
- 4.1.4 Any event of a similar nature to those set out at clauses 4.1.1 to 4.1.3 occurs in respect of the Licensee in any jurisdiction other than England and Wales.
- 4.1.5 The Licensor ceases to carry on business or any part of its business which relates to the Licensed Programs.
- 4.1.6 The owner ceases to be the owner of the Intellectual Property Rights in the Material by means of an assignment of the same to a third party who fails to secure escrow protection for the Licensee on no less favourable terms to this agreement within 30 days of the date of such assignment to the reasonable satisfaction of and at no increased cost to the Licensee.
- 4.1.7 the Licensor shall be in material breach of its obligation to deposit revised copies of the Material pursuant to either clause 2.2 above or clause 10.2 below or a replacement copy of the Material pursuant to clause 2.3 above.
- 4.1.8 the Licensor shall be in material breach of its obligation to provide technical support and has failed to remedy such breach pursuant to the terms of the Technical Support Agreement.
- 4.2 In order to obtain the release of the Material the Licensee shall forthwith upon becoming aware of a Relevant Event prepare and submit to TES a statutory declaration which shall:
 - 4.2.1 be sworn by a duly authorised officer of the Licensee;
 - 4.2.2 set out the facts and circumstances of the Relevant Event; and
 - 4.2.3 have attached thereto all relevant supporting documentation in the Licensee's possession.
- 4.3 Upon receipt of a Statutory Declaration under clause 4.2 above TES shall submit a copy of the Licensee's statutory declaration to the Licensor forthwith upon receiving the same. The licensor shall either:
 - 4.3.1 remedy the breach giving rise to the Relevant Event; or
 - 4.3.2 by written notice (setting out all relevant facts and circumstances and having attached thereto all relevant documentation in the Licensor's possession) deny its occurrence.
- 4.4 Unless within 14 days of dispatch of the Licensee's copy statutory declaration to the Licensee, TES receives a counter notice from the Licensor then TES is hereby authorised upon the expiry of said 14 days (and subject to the said statutory declaration complying with the provisions of clause 4.2 above and on receipt of a signed confidentiality undertaking in the form set out in the Third Schedule) to release the Material to the Licensee.
- 4.5 If the Licensor denies the occurrence of a Relevant Event by written notice pursuant to clause 4.3.2 above:
 - 4.5.1 TES shall not release the Material;
 - 4.5.2 TES shall forthwith submit a copy of the Licensor's written notice to the Licensee;
 - 4.5.3 each of the Licensor and the Licensee hereby agrees to use its best endeavours to reach agreement upon whether or not a Relevant Event has taken place within 30 days of the date of receipt by the Licensee of the Licensor's notice referred to in clause 4.3.2 above in default of which the matter shall be settled in accordance with the disputes procedure set out in clause 19 below; and
 - 4.5.4 if it is agreed by the parties pursuant to clause 4.5.3 above or decided pursuant to the disputes procedure in clause 19 below that a Relevant Event has occurred within the terms of clause 4.1 above then the Licensor shall have 14 days from the date of said agreement or decision (as the case may be) to remedy the breach giving rise to the Relevant Event failing which TES is hereby authorised to release the Material to the Licensee upon receipt of a statutory declaration (in the form specified in clause 4.2 above) from the Licensee that the said breach remains unremedied.

5 Property and confidential information in the Material

5.1 Notwithstanding the deposit and release of the Material in accordance with the terms of this agreement all confidential information and intellectual property rights therein shall remain vested in the Licensor.

6 Licensee's covenants

6.1 Upon receipt of the Material the Licensee shall:

- 6.1.1 use the Material solely for the purposes of maintaining and/ or enhancing the Licensed Programs;
- 6.1.2 keep confidential the Material and limit access to the Material to those of its employees agents contractors or sub-contractors who either have a need to know or who are directly engaged in the maintenance and/ or enhancement of the Licensed Programs;
- 6.1.3 not assign transfer sell lease rent charge or otherwise deal in or encumber the Material nor use the same on behalf of or for the benefit of any other party;
- 6.1.4 not alter or remove any proprietary notices affixed to or contained in the Material and will ensure the inclusion of such proprietary notices on any back-up copies of the Material held by or under the control of the Licensee; and
- 6.1.5 without prejudice to the generality of the foregoing shall take all such other steps as shall from time to time be necessary to protect the Confidential Information and Intellectual Property Rights of the Licensor in the Material and to ensure the compliance with the provisions of this clause 6 by its employees agents contractors and sub-contractors.

6.2 Upon the proper termination or expiration of the Licence Agreement the Licensee shall at the option of the Licensor (or any person to whom the title to the software programs the subject of the Licence Agreement has been assigned or transferred) either return all copies of the Material in its care or under its control or certify in writing that the same have been destroyed.

7 Covenants by TES

7.1 TES hereby covenants and undertakes to the Licensor:

- 7.1.1 not to assign transfer sell lease rent charge or otherwise deal in or encumber the Material;
- 7.1.2 not to use the Material for its own purposes or on behalf of any other party nor to disclose test or release the same except in accordance with the provisions of this agreement; and
- 7.1.3 without prejudice to the generality of the foregoing to take all such reasonable steps as shall from time to time be necessary to protect the confidential information and intellectual property rights of the Licensor in the Material and to ensure the compliance with the provisions of this clause 7 by its employees agents and sub-contractors.

8 Charges and Payment

8.1 The Licensor and Licensee shall respectively pay the charges of TES in the proportions and at the times set out in the Second Schedule hereto.

8.2 TES shall be entitled to review, vary and increase its charges not more than once in every successive period of twelve months during the currency of this agreement upon giving not less than 30 days notice to each of the Licensor and Licensee provided that such review variation and increase shall not take place until the fifth anniversary of the date of this Agreement.

8.3 TES reserves the right to charge the Licensor and Licensee interest in respect of the late payment of any sum due under this Agreement (as well after as before judgment) at the rate of 4 per cent per annum above the base rate from time to time of National Westminster Bank plc from the due date therefore until payment.

8.4 All forms of testing other than Integrity Testing shall be carried out by TES at the cost of the party requesting the same at the prevailing rate of TES from time to time.

9 Licensor's warranty

9.1 The Licensor represents and warrants to the Licensee and TES that:

- 9.1.1 the Licensor is the owner of the Intellectual Property Rights in the Material other than Third Party Material;
- 9.1.2 the Licensor holds a valid Licence to use any Third Party Material comprised in the Licensed Programs and has the express authority of the Owner of the Third Party Material to deposit the same with TES under the terms of this Agreement;

- 9.1.3 the Licensor shall produce to TES upon deposit of the Material a signed letter of authority from the owner of the Third Party Material confirming the authority pursuant to clause 9.1.2;
- 9.1.4 no provisions of this Agreement or its performance places the Licensor in breach of any agreement with any third party;
- 9.1.5 subject to the time limit for depositing revisions to the Material set out in clause 2.2 above the Material deposited with TES shall at all times be a complete accurate and up-to-date copy of the Source Code version of the current release of the Licensed Programs; and
- 9.1.6 the Material shall contain all information in human readable form necessary to enable a reasonably skilled programmer or analyst to maintain and/ or enhance the Licensed Programs without the help of any other person or reference to any other material and that without prejudice to the generality of the foregoing the Source Code shall contain all listings of code programmer's comments logic manuals and flow charts.

10 Testing of the Source Code

- 10.1 TES shall not be liable to any party or third party to determine the functionality, suitability, operation, effectiveness, accuracy or completeness of the Material.
- 10.2 Within 14 days of receipt of the Material pursuant to clause 2 TES shall apply Integrity Testing to the same and provide a written report to the Licensor and the Licensee of such testing.
- 10.3 If in the reasonable judgment of TES the Material does not pass the Integrity Test then upon receipt of notice thereof from TES the Licensor shall be obliged to deposit with TES within 14 days of receipt of said notice such revisions to the Material as shall be necessary to ensure its compliance with the Warranty.
- 10.4 Both the Licensor and the Licensee may at any time request TES to carry out further testing to the Material at the expense of the person requesting the same at the then prevailing charging rate of TES.
- 10.5 If in the reasonable judgment of TES the Material fails to pass the Certification Testing then the charges of TES for such Certification Testing, shall be paid by the Licensor.
- 10.6 TES shall be entitled to levy its charges on a time and materials basis at its then prevailing rates. Such charges shall be payable (together with value added tax thereon) by the Licensor or Licensee (as the case may be) within thirty days of receipt of an invoice therefore.

11 Liability of TES

- 11.1 Save in the specific circumstances of clause 10 above TES shall not be under any obligation to examine enquire into or inspect the accuracy completeness or currency of the Material from time to time deposited with it by the Licensor.
- 11.2 Subject to ensuring compliance with the provisions of clauses 4.2.1, 4.2.2 and 4.2.3 above TES shall not be under any obligation to examine enquire into or check the accuracy completeness or authenticity of any statutory declaration submitted by the Licensee pursuant to clause 4.2 above.
- 11.3 Nothing in this Agreement excludes or limits the liability of either party for fraud, fraudulent misrepresentation, death or personal injury caused by its negligence.
- 11.4 The aggregate liability of TES for all Defaults resulting in direct loss of or damage to the tangible, material property (excluding claims relating to data contained on any tangible medium) of the Licensor and Licensee under the Agreement whether arising in contract, tort (including negligence) or otherwise howsoever shall be limited to a maximum amount of £3,000,000 (Three Million Pounds Sterling) in aggregate.
- 11.5 The total aggregate liability of TES for loss in respect of Defaults whether arising in contract, tort (including negligence) or otherwise howsoever (other than those governed by clauses 11.3 and 11.4) shall in no event exceed £3,000,000 (Three Million Pounds Sterling).
- 11.6 In no event shall TES be liable in contract, tort (including negligence), breach of statutory duty or otherwise howsoever for:
 - 11.6.1 any loss of profit, loss of business, loss of goodwill, loss of contracts, loss of revenues or loss of anticipated savings; or
 - 11.6.2 any increased costs or expenses; or
 - 11.6.3 loss of, damage to or corruption of data; or
 - 11.6.4 any special, indirect or consequential loss or damage of any nature whatsoever, whatever the cause thereof, arising out of or in connection with the Agreement.
- 11.7 Time shall not be of the essence in the performance of the obligations of TES in this agreement.

11.8 TES shall not be under any obligation to verify the validity, authenticity, velocity or proper execution of any document, declaration, notice or receipt received under this Agreement and shall not be liable for acting in accordance with the terms of this Agreement.

12 Termination

12.1 This agreement shall continue in full force and effect until terminated:

12.1.1 by TES upon giving not less than 30 days notice to each of the Licensor and Licensee;

12.1.2 by the Licensor forthwith if the Licence Agreement and Technical Support Agreement is properly terminated for breach by the Licensee;

12.1.3 jointly (but not otherwise) by the Licensor and Licensee upon giving not less than 30 days notice to TES;

12.1.4 by the Licensee if the License Agreement has expired or has been lawfully terminated; or

12.1.5 by the Licensee at any time upon 30 days notice to TES at the expiration of which TES shall return the Material to the Licensor.

12.2 Forthwith upon receipt of notice of termination pursuant to clause 12.1.1 above the Licensor and Licensee agree to use their respective best endeavours to appoint a mutually acceptable replacement depositee of the Material on terms and conditions as near as possible identical to those set out in this agreement.

12.3 In the event of the termination of this Agreement pursuant to this clause 12 TES shall return the Material to the Licensor at its registered office or such other address as it or a person authorised on its behalf shall in writing notify to TES.

12.4 Without prejudice to the provisions of clause 12.1 above this Agreement shall terminate upon the release of the Material by TES to the Licensee pursuant to clause 4 above.

12.5 The provisions of clauses 1, 3, 5, 6, 8, 11, 12.5, 13, 16, 19 and 20 shall remain in full force and effect after termination of this agreement.

12.6 The termination of this agreement, howsoever arising shall be without prejudice to the rights of the parties prior to such termination and in any event the Licensor and the Licensee shall remain liable for the charges of TES which are due but unpaid at the date of termination.

13 Waiver

13.1 The rights of either party arising out of any provision of the Agreement or any breach thereof shall not be waived except in writing. Any waiver by either party of any of its rights under the Agreement or of any breach of the Agreement shall not be construed as a waiver of any other rights or of any other or further breach.

14 Notices

14.1 All notices to be given under the Agreement shall be in writing in English and left at or sent by first class registered or recorded delivery mail, or fax to the appropriate address shown at the head of the Agreement or left at or sent to such other address as the party concerned may from time to time designate by notice pursuant hereto. Any such notice shall be deemed given:

14.1.1 at the time when the same is left at the addressee's address; or

14.1.2 on the second customary working day in the addressee's country after the same shall have been properly posted; or

14.1.3 in the case of a fax, on the first such working day after the day of transmission by the fax operator provided that the transmitting fax machine provides upon completion of the transmission a transmission report stating that the notice has been duly transmitted without error to the addressee's fax number.

15 Entire agreement

15.1 This Agreement supersedes all prior arrangements undertakings and agreements (whether oral or written) between the parties hereto in respect of the subject matter hereof and may only be varied by a document signed for and on behalf of all parties.

16 General

16.1 Each party shall notify all other parties within 14 days of the following events:

16.1.1 a change of its name, contact address or registered office; or

16.1.2 any change in circumstances which may reasonably be viewed to affect the efficiency, validity or operation of this agreement.

16.2 In the event that the Licensor assigns or transfers the whole of any part of its Intellectual Property Rights in the Material the Licensor shall within 14 days of such event give notice to the other parties provided the full name and address (including registered office) of the assignee or transferee and shall notify the assignee or transferee of the provisions of clause 4.1.6.

16.3 No party shall assign, transfer or otherwise dispose of this agreement or any rights or obligations created by it without the prior written consent of the other parties.

17 Force Majeure

17.1 Neither party shall be liable for any failure or delay in the performance of any of its obligations under the Agreement or for any consequence thereof if such failure or delay is due to reasons beyond its reasonable control including but not limited to fire, flood, war, nuclear accident or explosion, civil commotion, interruption of power supplies (Force Majeure).

17.2 If Force Majeure occurs the delaying party shall be entitled to an extension of time for so long as the Force Majeure persists on condition that:

17.2.1 it promptly notifies the other party ("Unaffected Party") of the occurrence of the Force Majeure;

17.2.2 it discusses with the Unaffected Party possible action to be taken to overcome the effect of the Force Majeure; and

17.2.3 it uses all reasonable endeavours to overcome the Force Majeure.

17.3 If the Force Majeure persists for a period of three months or more the party not claiming Force Majeure may give notice to the other to terminate this Agreement with effect from a date specified in the notice without further liability.

17.4 No term of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any third party.

18 Indemnity

18.1 Save for any claim falling within the provisions of clauses 11.3 or 11.4 the Licensor and the Licensee hereby indemnify TES in respect of all costs, fees and expenses incurred directly or indirectly as a result of any claim, litigation, proceedings or dispute resolution of any nature between the Licensor and the Licensee.

18.2 The Licensor hereby indemnifies TES, its offices, agents, employees and sub-contractors against all costs, claims demands, liability and expenses of whatever nature incurred or sustained by TES as a result of, consequential upon, arising out of, or in connection with any claim by any third party for alleged infringement of Intellectual Property Rights by or on behalf of TES in respect of the Material.

19 Disputes

19.1 All disputes or differences which shall at any time hereafter arise between the parties hereto in respect of the construction or effect of this agreement or the rights duties and liabilities of the parties hereunder or any matter or event connected with or arising out of this agreement (a 'Dispute') shall be referred to such Independent Expert as the parties shall jointly nominate.

19.2 If the parties hereto shall fail to nominate a Third Party within 14 days of the date of occurrence of the Dispute then the Third Party shall be nominated at the request of any of the parties hereto by the President for the time being of the Law Society.

19.3 The Independent Expert (whether appointed under clause 19.1 or 19.2 above) shall act as an expert and not as an arbitrator.

19.4 The Licensor and the Licensee shall submit full written submissions to the Independent Expert within 10 working days of his appointment together with full documents evidence in support of their claim.

19.5 The Independent Expert shall be requested to give a decision on the matter in writing as soon as practicable and in any event within 21 days of the date of referral and such decision shall be final and binding on the parties.

19.6 The costs and expenses of the Independent Expert shall be paid by the party against whom the decision is given.

20 VAT

20.1 All amounts stated in this agreement are expressed exclusive of Value Added Tax.

21 Law

21.1 This Agreement shall be governed by and construed in accordance with English Law.

Signed for and on behalf of

TOTAL ESCROW SOLUTIONS Plc

.....
Name

.....
Authorised Signatory

.....
Date

Signed for and on behalf of (Licensor/Owner)

.....
Name

.....
Authorised Signatory

.....
Date

First Schedule**The Licensed Programs**

The software programs known as [] or any other name given to it by the Licensor from time to time.

Second Schedule**Details of the Charges of TES**

| | Item | Amount (£) | Payable by Licensor | Payable by Licensee |
|---|-----------------------|-------------------|----------------------------|----------------------------|
| 1 | Initial Fee | £650 | ?? | ?? |
| 2 | Annual Fee | £500 | ?? | ?? |
| 3 | Release Fee | £100 | N/A | 100% |
| 4 | Certification Testing | £P.O.A | | |

1. The Initial Fee shall be payable (together with VAT thereon) and subject to the presentation of an invoice in respect thereof upon the date of order leading to the execution of this Agreement.
2. The Annual Fee shall be payable (together with VAT thereon) and subject to the presentation of an invoice in respect thereof in advance upon the date of execution of this Agreement and upon each subsequent anniversary thereof or (if later) within thirty days of receipt of invoice.
3. The Release Fee shall be payable (together with VAT thereon) and subject to the presentation of an invoice in respect thereof immediately prior to and as a condition of the release by TES of the Material pursuant to clause 4 above.
4. Additional fees will be charged by TES for storage in excess of one cubic meter at the prevailing rate from time to time.

Third Schedule

Confidentiality Undertaking upon release of Material

This undertaking is given on release of the Material pursuant to a Software Escrow Agreement dated the day of 201[] and made between **TOTAL ESCROW SOLUTIONS PLC** (TES) of the first part (the Licensor) of the second part (the Licensee) of the third part and .

- 1 Definitions contained in the Software Escrow Agreement will apply to this undertaking.
- 2 In consideration of TES delivering to the Licensee a copy of the Material the Licensee hereby undertakes with TES and with the Licensor:
 - 2.1 to use the Material solely for the purposes of maintaining, and/ or enhancing the Licensed Programs;
 - 2.2 not to use the Material for any other purpose nor disclose it to any person save to such of its employees, agents, contractors or subcontractors who need access to the same in order to maintain, and/ or enhance the Licensed Programs on behalf of the Licensee;
 - 2.3 to hold all media containing the Material in a safe or strong room when not in use;
 - 2.4 forthwith to destroy the Material should the Licensee cease to be entitled to use the Licensed Programs;
 - 2.5 not to alter or remove any proprietary notices affixed to or contained in the Material and to ensure the inclusion of such proprietary notices on any back-up copies of the Material held by or under the control of the Licensee;
 - 2.6 not to assign transfer sell lease rent charge or otherwise deal in or encumber the Material nor use the same on behalf of or for the benefit of any other party; and
 - 2.7 without prejudice to the generality of the foregoing to take all such other steps as shall from time to time be necessary to protect the Confidential Information and Intellectual Property Rights of the Licensor in the Material and to ensure the compliance with the provisions of this clause by its employees agents contractors and sub-contractors.
- 3 TES will upon receipt of the release fee plus its reasonable expenses together with the documents specified in clause 4.1 or 4.2 as appropriate deliver a copy of the Material to the Licensee.

Signed for and on behalf of
TOTAL ESCROW SOLUTIONS Plc

.....
Name

.....
Authorised Signatory

.....
Date

Signed for and on behalf of the Licensee

.....
Name

.....
Authorised Signatory

.....
Date