



INDIVIDUAL LICENSEE ESCROW AGREEMENT

THIS AGREEMENT is made on **[INSERT DATE]** BETWEEN THE FOLLOWING PARTIES:

- (1) **SES SECURE LIMITED** (registered number 3551656) whose registered office is at Chadsworth House, Wilmslow Road, Handforth, Cheshire, SK9 3HP, United Kingdom ("SES");
- (2) **[INSERT LICENSOR NAME]** (registered number **[INSERT COMPANY REGISTRATION NUMBER]**) whose registered office is at **[INSERT COMPANY REGISTERED ADDRESS]** ("Licensor") and;
- (3) **[INSERT LICENSEE NAME]** (registered number **[INSERT COMPANY REGISTRATION NUMBER]**) whose registered office is at **[INSERT COMPANY REGISTERED ADDRESS]** ("Licensee").

each a "party" and together the "parties".

RECITALS:

- (A) The Licensor has agreed to deposit the Source Code version of the Licensed Programs with SES and has authorised SES, subject to the terms and conditions of this Agreement, to release the same to the Licensee in the circumstances provided for within this Agreement.

1 Definitions

1.1 In this Agreement unless the context otherwise requires:

"**Basic Deposit Testing**" means the testing to be carried out as described in Schedule 4, Part 1;

"**Commencement Date**" means the date of this Agreement;

"**Confidential Information**" means secret or confidential information relating to the business, activities, assets, properties, financial affairs, work methods, customers, suppliers including commercial, financial, marketing or technical information, know-how, trade secrets and other information in any form or medium in relation to a party or its Employees which is acquired by and/or disclosed orally or in writing before or after the Commencement Date to the other party or parties and their Employees together with any reproduction of such information in any form or medium or any part(s) of this information (and, for the purposes of this Agreement, "**Confidential**" means that the information, either in its entirety or in the precise configuration or assembly of its components, is not publicly available);

"**Dispute Resolution Procedure**" means the dispute resolution procedure set out in Clause 15;

"**EDDS**" means the secure and encrypted electronic digital depositing service provided by SES;

"**Employees**" means the employees, agents, contractors and/or sub-contractors of a party;



"Fees" means SES's fees for the provision of escrow services under this Agreement as set out in the Order Form and amended from time to time in accordance with the provisions of Clause 9.2;

"Implementation Fee" means the implementation fee listed in the Order Form as amended from time to time by SES in accordance with the terms of Clause 9.2;

"Intellectual Property Rights" means copyright, rights in software, moral rights, database rights, domain names, patents, know how, registered designs, unregistered designs, trademarks and service marks (whether registered or not) and all other intellectual property rights, whether registerable or not, subsisting anywhere in the world;

"Licence" means the licence agreement between the Licensor and Licensee for the use of the Licensed Programs;

"Licensed Programs" means the software programs listed in Schedule 1 which are licensed to the Licensee under the Licence;

"Licensee Authorised Representative" means the person listed in Schedule 1;

"Licensor Warranty" means the warranties set out in Clause 8.1(a) and 8.1(b);

"Material Breach Relevant Event" means a material breach by the Licensor of its obligations in the Licence and which the Licensor has failed to remedy pursuant to the terms of the Licence;

"Modification" means any modification, enhancement, revision or update to the Licensed Programs made from time to time during the term of the Licence by the Licensor or its agents, contractors or suppliers;

"Order Form" means order form set out in Schedule 2 of this Agreement which confirms the fees payable by each party;

"Relevant Event" means any or all of the following events:

- (a) the Licensor:
 - (i) suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (IA 1986) as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the IA 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
 - (ii) commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Licensor with one or more other companies or the solvent reconstruction of the Licensor;
 - (iii) applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;

- (iv) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Licensor (being a company, limited liability partnership or partnership) other than for the sole purpose of a scheme for a solvent amalgamation of the Licensor with one or more other companies or the solvent reconstruction of the Licensor;
 - (v) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the Licensor (being a company, partnership or limited liability partnership);
 - (vi) a person becomes entitled to appoint a receiver over all or any of the assets of the Licensor or a receiver is appointed over all or any of the assets of the Licensor;
 - (vii) (being an individual) is the subject of a bankruptcy petition, application or order;
 - (viii) a creditor or encumbrancer of the Licensor attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Licensor's assets and such attachment or process is not discharged within 14 days;
 - (IX) any event occurs, or proceeding is taken, with respect to the Licensor in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in sub-clause (i) to (viii) above;
- (b) the Licensor ceases to carry on its business;
 - (c) the Licensor is in material breach of its obligation to deposit revised or replacement copies (as appropriate) of the Source Code pursuant to Clause 2.1(c); or
 - (d) the Licensor assigns the copyright in the Licensed Programs and the assignee fails within sixty (60) days of such assignment to enter an agreement for escrow services with the Licensee on identical or similar terms as this Agreement without materially increasing the cost to the Licensee.

"Remote Code Validation Testing" means remote code validation testing as more fully described in Schedule 4, Part 2;

"Remote Code Validation Testing Fee" means the fee for Remote Code Validation Testing set out in the Order Form;

"Source Code" means computer programs or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent object code, together with all technical information and documentation necessary for the use, reproduction, modification and enhancement of such computer programs including any Modification;

"Signed Declaration" means a signed declaration as described in Clause 4.1;

"Term" means the period commencing on the Commencement Date and ending on the date this Agreement is terminated in accordance with Clause 12;

"Third Party Source Code" means with respect to the source code of the Licensed Programs any Intellectual Property Rights which are owned by a third party to this Agreement.

- 1.2 The headings used in this Agreement are for convenience only and will not affect its interpretation or construction.
- 1.3 References to Clauses and Schedules are references to the clauses of and schedules to this Agreement. The Schedules are deemed to be incorporated in, and form part of, this Agreement and the term "Agreement" will be construed accordingly. Should any conflict arise between the terms of the body of this Agreement and the Schedules, the terms of the body of the Agreement will take precedence.
- 1.4 Words imparting the singular will include the plural and vice versa. References to persons include an individual, company, corporation, firm or partnership.
- 1.5 All sums payable hereunder are exclusive of VAT or any other applicable tax or duty payable upon such sums which will be added if appropriate at the rate prevailing at the relevant tax point.
- 1.6 The words and phrases "other", "including" and "in particular" will not limit the generality of any preceding words or be construed as being limited to the same class as any preceding words where a wider construction is possible.

2 Deposit of Source Code

- 2.1 Within twenty-one (21) days of:
 - (a) the Commencement Date the Licensor will deposit with SES via the EDDS one copy of the Source Code version of the Licensed Programs together with written details of the Licensor's name and address, the name and version of the Licensed Programs deposited, all relevant passwords and encryption details and all relevant documentation;
 - (b) the date of any Modification, the Licensor will deposit with SES via the EDDS a revised copy of the whole (or the relevant part) of the Source Code incorporating the Modification;
 - (c) receipt of written notification from SES that the Source Code has been damaged, destroyed or lost, the Licensor will deposit with SES a replacement copy of the Source Code updated with all relevant Modifications.
- 2.2 The Licensor warrants that the Source Code deposited under clause 2.1 contains all information in human-readable form and is on suitable media to enable a reasonably skilled programmer or analyst to understand, maintain, modify and correct the Licensed Programs.

3 Custody of Source Code

- 3.1 Upon receipt of the Source Code pursuant to Clause 2.1 or Clause 10.1 SES will:
 - (a) ensure that the Source Code is held securely on the EDDS; and
 - (b) send written confirmation to the Licensor and Licensee of receipt and storage of the Source Code.

4 Release of Source Code

- 4.1 Within thirty (30) days of the Licensee becoming aware of a Relevant Event and/or Material Breach Relevant Event occurring, the Licensee will prepare and submit to SES a Signed Declaration in the form set out in Schedule 3 which:
- (a) is signed by a duly authorised officer of the Licensee;
 - (b) sets out the facts and circumstances of the Relevant Event and/or Material Breach Relevant Event;
 - (c) confirms that the Licence, or a superseding licence for the Licensed Programs, is valid and subsisting at the date of the Signed Declaration and, in the case of the superseding licence, attaches a copy of such licence; and
 - (d) attaches all relevant supporting documentation in the Licensee's possession,
- ("Signed Declaration")**.
- 4.2 On SES's receipt of a Signed Declaration relating to a Relevant Event, SES will submit a copy of the Licensee's Signed Declaration to the Licensor. If the Licensor does not by written notice deny the occurrence of the Relevant Event and confirm such denial with supporting documentation within fourteen (14) days of receipt of a copy of the Signed Declaration, SES is hereby authorised by the parties to release the Source Code to the Licensee.
- 4.3 On SES's receipt of a Signed Declaration relating to a Material Breach Relevant Event, SES will submit a copy of the Licensee's Signed Declaration to the Licensor. If the Licensor does not either:
- (a) remedy the breach giving rise to the Material Breach Relevant Event within thirty (30) days of receipt of a copy of the Licensee's Signed Declaration and provide written confirmation to the Licensee and SES that the Material Breach Relevant Event has been remedied; or
 - (b) by written notice (setting out all relevant facts and circumstances and having attached thereto all relevant documentation in the Licensor's possession) deny the occurrence of the Material Breach Relevant Event within thirty (30) days of receipt of a copy of the Licensee's Signed Declaration then SES is hereby authorised by the parties to release the Source Code to the Licensee.
- 4.4 If the Licensor denies the occurrence of a Relevant Event and/or a Material Breach Relevant Event by written notice pursuant to Clauses 4.2 and 4.3(b) respectively or the Licensor provided written confirmation that the Material Breach Relevant Event has been remedied pursuant to Clause 4.3(a):
- (a) SES will not release the Source Code to the Licensee;
 - (b) SES will submit a copy of the Licensor's written notice or confirmation to the Licensee;
 - (c) the Licensor and the Licensee agree to use its reasonable endeavours within fourteen (14) days of the Licensee's receipt of the Licensor's written notice or confirmation under Clause 4.4(b) to reach agreement upon whether or not a Relevant Event and/or a Material Breach Relevant Event has occurred. Should the Licensor and Licensee fail to reach such an agreement the matter will be settled in accordance with the Dispute Resolution Procedure; and

- (d) if it is agreed by the parties pursuant to Clause 4.4(c) or decided pursuant to the Dispute Resolution Procedure that:
 - (i) a Relevant Event has occurred then SES is hereby authorised on receipt of a further Signed Declaration from the Licensee confirming the Relevant Event has occurred, to release the Source Code to the Licensee;
 - (ii) a Material Breach Relevant Event has occurred then the Licensor will have fourteen (14) days from the date of said agreement or decision (as the case may be) to remedy the breach giving rise to the Material Breach Relevant Event and provide written confirmation to the Licensee and SES that the Material Breach Relevant Event has been remedied. Should the Licensor fail to comply with such obligation, SES is hereby authorised on receipt of a further Signed Declaration from the Licensee that the said breach remains unremedied, to release the Source Code to the Licensee; or
 - (iii) a Relevant Event and/or a Material Breach Relevant Event has not occurred SES will not release the Source Code to the Licensee and the terms of this Agreement shall continue in full force and effect.

4.5 SES will not be under any obligation to examine, enquire into or check the accuracy, completeness or authenticity of any Signed Declaration submitted by the Licensee.

5 Intellectual Property Rights and Confidential Information

- 5.1 Notwithstanding the deposit and release of the Source Code in accordance with the terms of this Agreement:
 - (a) all Intellectual Property Rights in and ownership of the Source Code will remain vested in the Licensor and/or its licensors; and
 - (b) the Source Code will remain the Confidential Information of the Licensor and/or its licensors.
- 5.2 The Licensor grants to SES the non-exclusive, royalty-free right for the duration of the Term to use and copy the Source Code for the purposes of complying with the terms of this Agreement.
- 5.3 All Intellectual Property Rights subsisting in the reports created during the Basic Deposit Testing and Remote Code Validation Testing processes shall belong to SES and, where relevant, its sub-contractors. The Licensor and relevant Licensee shall be entitled to use such reports solely for internal purposes and for complying with their obligations under this Agreement.

6 Licensee Obligations

- 6.1 Upon the Licensee's receipt of the Source Code in accordance with Clause 4, the Licensee will:
 - (a) use the Source Code solely for the purposes of understanding, maintaining, modifying, correcting and/or enhancing the Licensed Programs exclusively for and on behalf of the Licensee together with such other purposes (if any) as are permitted under the Licence ("**Release Purposes**");
 - (b) keep confidential the Source Code and limit access to the Source Code to those of its Employees who either have a need to know or who are directly engaged in use of the Licensed Programs for the Release Purposes;

- (c) not assign, transfer, sell, lease, rent, charge or otherwise deal in or encumber the Source Code in any way whatsoever nor use the same on behalf of or for the benefit of any other party without the prior written consent of the Licensor;
- (d) not alter or remove any proprietary notices affixed to or contained in the Source Code and will ensure the inclusion of such proprietary notices on any back-up copies of the Source Code held by or under the control of the Licensee;
- (e) without prejudice to the generality of the foregoing will take all such other steps as will from time to time be reasonably necessary to protect the Confidential Information and Intellectual Property Rights of the Licensor in the Source Code and to ensure the compliance with the provisions of this Clause 6 by its Employees; and
- (f) upon the termination of the Licence or cessation of the Licensee's rights to use the Source Code, the Licensee will at the option of the Licensor (or any person to whom the title to the Source Code has been assigned or transferred) either return all copies of the Source Code in its care or under its control or certify in writing that the same have been destroyed.

7 SES Obligations

7.1 SES hereby covenants and undertakes to the Licensor and Licensee:

- (a) not to assign, transfer, sell, lease, rent, charge or otherwise deal in or encumber the Source Code save as set out in this Agreement;
- (b) to keep Confidential Information belonging to the Licensor or Licensee confidential and to not use or disclose the same save for as necessary to comply with its obligations under this Agreement and/or as required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction;
- (c) not to use, and procure that any of its Employees do not use, the Source Code 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
- (d) without prejudice to the generality of the foregoing to take all such reasonable steps as will from time to time be necessary to protect the security of the Source Code on the EDDS and to ensure the compliance with the provisions of this Clause 7 by its Employees.

7.2 Save in accordance with the terms of Clause 10, SES will not be under any obligation to examine, enquire into or otherwise inspect the accuracy, completeness or currency of the Source Code from time to time deposited with it by the Licensor.

7.3 SES will not be obliged to request any Modifications from the Licensor. It is the responsibility of the Licensor to send all Modifications to SES and the responsibility of the Licensee to notify SES if it becomes aware of the existence of any such Modifications.

8 Licensor Warranties

8.1 The Licensor represents and warrants to SES and the Licensee that on each day during the Term:

- (a) subject to the time limit for depositing revisions to the Source Code set out in Clause 2.1(a), the Source Code deposited with SES will 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;

- (b) the Source Code will 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 will contain all listings of code programmer's comments logic manuals and flow charts;
- (c) the Licensor owns all Intellectual Property Rights in the Source Code other than in the Third Party Source Code; and
- (d) the Licensor has a licence from the owner of the Intellectual Property Rights in the Third Party Source Code and such licence permits the Licensor to place the Third Party Source Code on deposit under the terms of this Agreement and to permit the release of the Third Party Source Code on the occurrence of a Relevant Event or a Material Breach Relevant Event.

8.2 The Licensor hereby indemnifies, and keeps fully indemnified, SES and its Employees against all costs, expenses, fees (including, without limitation, legal and other professional advisers' fees), losses, damages and other liabilities that SES and/or its Employees suffer due to the Licensor breaching any of its warranties in Clause 8.1 and/or a third party claiming that SES is infringing its Intellectual Property Rights by holding the Source Code on deposit or releasing of the Source Code to the Licensee in accordance with the terms of Clause 4.

9 Fees

- 9.1 The Licensor and Licensee will respectively pay the Fees in the proportions and at the times set out in the Order Form.
- 9.2 SES will invoice the Licensor or the Licensee as applicable for the Fees. The Licensee and the Licensor shall pay all invoices submitted to it in full and in cleared funds, within (30) days of receipt of invoice, to the bank account nominated in writing by SES.
- 9.3 SES will be entitled to review and vary its Fees in-line with the Retail Price Index (RPI) once in every successive period of twelve (12) months during the Term upon giving not less than thirty (30) days notice to each of the Licensor and Licensee.
- 9.4 SES reserves the right to charge the Licensor and Licensee interest in respect of the late payment of any sum due under this Agreement at the rate of 8% per cent per annum above the base rate from time to time of the Bank of England from the due date until payment.
- 9.5 For the avoidance of doubt, SES will not be obliged to refund any part of the Fees on termination of the Agreement for any reason whatsoever.

10 Testing of the Source Code

- 10.1 On receipt of the Licensed Programs SES will conduct Basic Deposit Testing on the Source Code. On completion of the Basic Deposit Testing a report will be sent to SES, the Licensor and the Licensee. The Basic Deposit Testing is limited to those areas of testing set out in Schedule 4, Part 1. SES will not test for any other problem, fault, error, non-compliance with the Licensor Warranty or specification or any other failure of any nature whatsoever with the Source Code and neither SES nor any Employee will be held liable now or at any time in the future to the Licensee or other person due to any of the same occurring.

- 10.2 SES will, upon receipt of a written request from a Licensee and subject to the payment of the Remote Code Validation Testing Fee, undertake Remote Code Validation Testing on the Source Code. The Licensor agrees that following reasonable written notice from SES it will participate in the Remote Code Validation Testing and provide the Licensed Programs and all relevant hardware in order to undertake Remote Code Validation Testing. The results of the Remote Code Validation Testing will be sent to the Licensor and the Licensee and shall be treated by each party as Confidential Information. The Remote Code Validation Testing is limited to those areas of testing set out in Schedule 4, Part 2 and SES does not test for any other problem, fault, error, non-compliance with specification or any other failure of any nature whatsoever with the Source Code and neither SES nor any Employee will be held liable now or at any time in the future to the Licensee or any other person due to any of the same occurring.
- 10.3 If in SES's reasonable judgment the Licensor is in breach of the Licensor's Warranty, it will notify the Licensor and the Licensor will be obliged to deposit with SES within thirty (30) days of receipt of said notice such revisions to the Source Code as will be necessary to ensure its compliance with the Licensor's Warranty.
- 10.4 SES will be entitled to use any Employee to undertake the Basic Deposit Testing and Remote Code Validation Testing and will procure that such Employee complies with its confidentiality obligations set out in Clause 7.1(b).
- 10.5 If in SES's reasonable judgement the Remote Code Validation Testing fails as a result of the Source Code being incomplete in content, or fails to function or compile correctly, or the Source Code deposited fails to match the witnessed build, the Licensor commits to performing further Remote Code Validation Testing within the next thirty (30) days. This exercise will be performed as many times as necessary until deemed by SES to be a successful and complete build and all SES fees for any repeated Remote Code Validation Testing will be paid in full by the Licensor.

11 Limitation of Liability

- 11.1 Except as otherwise stated in this Agreement, all other conditions and warranties, whether expressed or implied by statute, common law, usage or otherwise, are excluded to the fullest extent permitted by law.
- 11.2 Subject to Clause 11.4, SES will not be liable to either the Licensor or the Licensee in contract, tort or otherwise (including, without limitation, liability for negligence or breach of statutory duty) for any loss of business, loss of revenue, loss of profit, loss of anticipated savings, loss or corruption of data, any wasted expenditure, or any indirect or consequential loss regardless of whether the same was reasonably foreseeable by SES.
- 11.3 Subject to Clauses 11.2 and 11.4, SES's total and aggregate liability in contract, tort or otherwise (including, without limitation, liability for negligence or breach of statutory duty) in connection with any and all claims arising under or in connection with this Agreement is limited to £5,000,000 (five million pounds sterling).
- 11.4 For the avoidance of doubt, SES does not exclude or restrict liability for death or personal injury resulting from its own negligence or the negligence of its Employees or for fraud or fraudulent misrepresentation.
- 11.5 SES shall not be liable in any way to the Licensor or the Licensee for acting in accordance with the terms of this Agreement and specifically (without limitation) for acting upon any notice, written request, waiver, consent, receipt, Signed Declaration or any other document furnished to it pursuant to and in accordance with this Agreement.
- 11.6 SES shall not be required to make any investigation into and shall be entitled in good faith without incurring any liability to the Licensor or the Licensee to assume (without requesting

evidence thereof) the validity, authenticity, veracity and due and authorised execution of any documents, written requests, waivers, consents, receipts, Signed Declarations or notices received by it in respect of this Agreement.

- 11.7 Nothing in this Agreement shall impose any liability on SES in respect of non-performance of its obligations under this Agreement to the extent such non-performance is due to the Licensor's or the Licensee's acts, omissions, negligence or default.

12 Termination

- 12.1 This Agreement may be terminated:

- (a) by SES upon giving not less than forty-five (45) days notice to each of the Licensor and Licensee;
- (b) by SES should the party responsible for payment of the Fees due under the Agreement have failed to pay such Fees within thirty (30) days of written request to do so by SES. Should the Licensor be responsible for such failure of payment, SES will notify the Licensee of the Licensor's failure to pay the Fees and will give the Licensee fourteen (14) days to pay the outstanding Fees on behalf of the Licensor prior to SES terminating the Agreement;
- (c) by the Licensee on thirty (30) days written notice provided to SES and the Licensor;
- (d) by the Licensor upon written notice to SES that the Licence has expired or has been properly terminated in accordance with its terms provided that documentary evidence accompanies such notice. On receipt of such notice SES will forward a copy to the Licensee Authorised Representative who shall have a period of fourteen (14) days to deny such expiry or termination has taken place in writing. If no such denial is received by SES within the stated time period, this Agreement will be terminated. If a denial is received, the issue will be settled by means of the Dispute Resolution Procedure;
- (e) jointly by the Licensor and Licensee upon giving not less than thirty (30) days written notice to SES.

- 12.2 Forthwith upon receipt of notice of termination pursuant to Clause 12.1(a), the Licensor and Licensee agree to use their respective best endeavours to appoint a mutually acceptable replacement depositary of the Source Code 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 Clause 12, SES will either destroy all copies of the Source Code that it holds or, at the request and expense of the Licensor, return the Source Code to the Licensor at its registered office or such other address as the Licensor notifies to SES in writing.

- 12.4 Without prejudice to the provisions of Clause 12.1, this Agreement will terminate upon the release of the Source Code by SES to the Licensee pursuant to Clause 4.

- 12.5 The terms of Clauses 5.1, 6.1(f), 7.1, 8.2, 9.3, 9.4, 11, 12.2, 15.6 and 16.1 will survive termination of this Agreement.

- 12.6 On and after termination of this Agreement, the Licensor and/or the Licensee (as appropriate) shall remain liable to SES for payment in full of any fees and interest which have become due but which have not been paid as at the date of termination.

- 12.7 The termination of this Agreement, however arising, shall be without prejudice to the rights accrued to the parties prior to termination.

13 General

- 13.1 Each party warrants that it has full capacity and authority to enter into and to perform this Agreement, and that in entering into this Agreement and performing its obligations under it, it is not and will not at any time be in breach of any of its express or implied obligations to any third party.
- 13.2 No party will be liable for a delay in performing its obligations under this Agreement if the delay or failure results from circumstances beyond its reasonable control including but not limited to force majeure, act of God, governmental act, fire, explosion, accident, civil commotion or industrial dispute. On the occurrence of any such circumstances, the party affected will give written notice thereof to the other parties and shall use all reasonable endeavours to minimise the period of any such delay.
- 13.3 This Agreement sets out the entire agreement and understanding between the parties in connection with the retention of the Licensed Programs in escrow and supersedes all prior arrangements, undertakings and agreements (whether oral or written) between the parties in respect of the subject matter hereof.
- 13.4 If at any time any one or more of the Clauses or sub-clauses of this Agreement is held to be or becomes void or otherwise unenforceable for any reason under any applicable law, the same shall be deemed omitted from the Agreement and the validity and/or enforceability of the remaining provisions of the Agreement shall not in any way be affected or impaired as a result of that omission.
- 13.5 Nothing in this Agreement shall create or be deemed to create a partnership or joint venture or relationship of employer and employee or principal and agent between the parties.
- 13.6 Any variation to the terms of this Agreement must be made in writing and signed by the authorised signatories of each of the parties.
- 13.7 The Licensor will not assign, transfer or sub-contract its rights or obligations under this Agreement to a third party without the prior written consent of the Licensee and SES, such consent (in either instance) not to be unreasonably withheld or delayed. The Licensee will not assign, transfer or sub-contract its rights and obligations under this Agreement to a third party without the prior written consent of the Licensor and SES, such consent (in either instance) not to be unreasonably withheld or delayed.
- 13.8 The rights and remedies of any party in respect of the Agreement shall not be diminished, waived or extinguished by the granting of any indulgence, forbearance or extension of time granted by one party to either of the other parties nor by any failure of, or delay by the said party in ascertaining or exercising any such rights or remedies. The waiver by any party of a breach of the Agreement shall not prevent the subsequent enforcement of that breach and shall not be deemed to be a waiver of any subsequent breach of that or any other provision.
- 13.9 No person who is not a party to the Agreement (including any Employees of either party) shall have the right (whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise) to enforce any term of the Agreement which expressly or by implication confers a benefit on that person without the express prior agreement in writing of all of the parties.
- 13.10 This Agreement may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement.

14 Notices

- 14.1 Any notice or other communication given or made under or in connection with the matters contemplated by this Agreement shall be in writing and or email (other than writing on the screen of a visual display unit or other similar device which shall not be treated as writing for the purposes of this Clause 14).
- 14.2 Any such notice or other communication shall be sent to the address listed at the head of this Agreement (unless a party notifies the other parties that it requires notices to be sent to an alternative address) and, if so addressed, shall be deemed to have been duly given or made as follows:
- (a) if sent by personal delivery, upon delivery at the address of the relevant party;
 - (b) if sent by first class post, then 2 days after posting; and
 - (c) if sent by email, when acknowledged by the recipient or otherwise upon the date upon which receipt can be proven.

15 Dispute Resolution Procedure

- 15.1 If a dispute arises between any or all of the parties, the authorised representatives of the relevant parties will use their reasonable endeavours to settle the dispute within fourteen (14) days of the matter being raised. Should the dispute not be resolved within this time period it may be escalated by written notice from either party to the managers of the authorised representatives.
- 15.2 On receipt of written notice of the terms of a dispute in accordance with the terms of Clause 15.1, the managers of the authorised representatives will use their reasonable endeavours to settle the dispute within fourteen (14) days of notification of the dispute.
- 15.3 If the dispute is not resolved by the managers under Clause 15.2, either party who is subject to the dispute will be entitled to request that the dispute be referred to a mediator for resolution. Following such request, the parties will reasonably agree the appointment of a mediator. If there is a failure to agree the appointment within three (3) days of a proposal by one party, the mediator will be appointed (at the request of either party) by the Centre for Dispute Resolution (CEDR) situated in London. All negotiations connected with the dispute during the mediation will be conducted in confidence without prejudice to the rights of the parties in any further proceedings. If agreement is reached on the resolution of the dispute during the mediation the parties will enter into a signed written agreement which will be binding. The parties will bear their own legal costs incurred in preparation for and conduct of the mediation. The costs and expenses of the mediation itself will be borne equally between the parties.
- 15.4 The procedures set out in this Clause 15 are without prejudice to any rights and remedies that may be available in respect of any breach of the provisions of this Agreement.
- 15.5 Nothing herein will prevent a party from seeking (including obtaining or implementing) interlocutory or other immediate relief.
- 15.6 The Licensor and Licensee jointly and severally indemnify SES against all costs, expenses, fees (including legal and other professional fees) and other liabilities (including, for the avoidance of doubt, management time) that SES directly or indirectly incurs due to SES and/or any Employees of SES being required to participate in the Dispute Resolution Procedure to settle a dispute between the Licensor and the Licensee.



16 **Law**

- 16.1 This Agreement will be governed by and construed in accordance with English Law. The parties hereby submit to the exclusive jurisdiction of the English courts.

The parties agree to the terms of this Agreement on the date of their signature.



Schedule 1

Licensed Programs

Part 1: Licensed Programs owned by Licensor:

Part 2: Licensee Authorised Representative:

Name:

Telephone Number:

Email:

Address:



Schedule 2

Order Form (Fees)

Description	Licensor	Licensee
Escrow Implementation fee		
Annual Subscription Fee		
Remote Code Validation Testing Fee		

Schedule 3

Signed Declaration

SIGNED DECLARATION TO REQUEST THE RELEASE OF SOURCE CODE

I, [NAME OF DECLARANT], of [ADDRESS], a duly authorised officer of the [NAME OF LICENSEE], do solemnly and sincerely declare that:

1. [SETS OUT THE FACTS AND CIRCUMSTANCES OF THE RELEVANT EVENT AND/OR MATERIAL BREACH RELEVANT EVENT];
2. a valid and subsisting licence to use the Licensed Programs (as defined in the Escrow Agreement entered by [NAME OF LICENSEE], [NAME OF LICENSOR] and SES Secure Limited on [DATE]) is existing at the date of this signed declaration and, in the case of a superseding licence, a copy of such licence is attached.
3. I make this solemn declaration conscientiously believing the same to be true.

Signature of declarant.....

Date

Schedule 4

Validation Testing

Part 1: Basic Deposit Testing

Basic Deposit Testing is checking that the deposit supplied contains the correct software and that all attributes of the Licensed Programs are correct and in line with the requirements that the Licensee has notified to SES. The following checks are carried out as part of the Basic Deposit Testing:

- Check the Source Code is apparent on the EDDS.
- If any files on the deposit are compressed, ensure they can be de-compressed.
- Assess whether any files on the deposit are encrypted. If encryption is detected, it will be ensured that the files can be decrypted and the method will be noted and returned.
- Check all passwords are correct.
- Scan supplied deposit for viruses.
- Check that source code files can be retrieved. A sample number of files shall be viewed to ensure that they can be retrieved.
- Check the version of the operating system for which the Source Code has been developed.
- Check the version number of the software.

If any of the above checks fail, the Licensor will be notified and asked to provide a replacement, which will be retested.

Once completed SES will compile a report which will be forwarded to all parties concerned under the Escrow agreements confirming all checks have been made. SES will ask the Licensor to submit the most up to date Source Code once per annum thus complying with terms and conditions set out in the Agreement.

Part 2: Remote Code Validation Testing

The Remote Code Validation Testing service is a more comprehensive approach than Basic Deposit and involves an SES Employee remotely witnessing the Licensor testing the software to ensure that the Source Code supplied is present and correct and that it can be built into the target application as expected by the Licensee.

Prior to Remote Code Validation Testing taking place, the process will be explained to the Licensor. This process will take the form of a secure telephone and audio conference with the following agenda:

- Explanation of the structure of the Remote Code Validation process.
- Description of the Technical Infrastructure (Licensee) to include hardware, software database(s), middleware and any peripheral applications/utilities required.
- If a database is part of the delivery, a schematic relationship diagram will be provided and summarised (Licensee).

The Licensor will then carry out the Remote Code Validation Testing whilst the SES consultant oversees the build through a secure web conferencing service. The Remote Code Validation Testing has the following procedure:

- Verify the presence of Source Code files on the validation hardware (including files that are genuine source code files).
- The complete system will then be built from the Source Code, database and ancillary parts of the application in order to prove the system. All steps carried out in the build of the complete application will be carefully documented and included in the final report.
- A SHA256 File Hash of the compressed Source Code is taken for validation purposes (to confirm that the Source Code provided to SES is the Source Code that SES are testing on).
- The compiled system will then be installed, again, all actions required to do this will be carefully documented and returned to the client.
- Some basic tests will then be carried out on the actual system itself. These can be based on the physical requirements of the Licensee, or can be put together by SES Employees, based on the documented system requirements.
- Any documentation that goes with the system (e.g. training or support documents) will be catalogued and, it will be ensured that these items are including the audio and visual recording of the build are placed on the Source Code Deposit.
- A directory of all folders, sub folders and files will be documented by the SES Consultant.
- The Source Code deposit will be uploaded using our secure SSL encrypted portal. Upon receipt SES will carry out the Basic Deposit Testing exercise to ensure that the directory corresponds with that witnessed by the SES Consultant.
- Once this is complete, the Remote Code Validation report will be compiled, to include all the steps above and the report from the Basic Deposit Testing.
- The SES consultant will then ensure that the Source Code and all documentation is deposited safely for secure storage on the EDDS.

The Basic Deposit Testing service is a straightforward process and is likely to take a similar amount of time for most applications. However, the time for completion of the Remote Code Validation Testing service is likely to vary depending on the size of the application in question. Please contact an SES Employee to discuss this in more detail.



Signed for and on behalf of
SES SECURE LIMITED

Signed for and on behalf of
[INSERT LICENSOR NAME]

Signed for and on behalf of
[INSERT LICENSEE NAME]