

MOTEX SOFTWARE LICENCE AGREEMENT

Last Updated: 26th November 2013

between

MOTEX EASIEST LTD

and

ALL MOTEX SOFTWARE USERS

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PARTIES

- (1) MOTEX EASIEST LIMITED incorporated and registered in England and Wales with company number 0405395 whose registered office is at 432 Gloucester Road, Horfield, Bristol, BS7 8TX (**Supplier**).
- (2) YOU the MOTEX SOFTWARE USER. By installing, copying, downloading, accessing, or otherwise using the Software product, you agree to be bound by the terms of this agreement. If you do not agree to the terms of this agreement, do not install or use the Software product. If you renew your Licence for the Software product at the end of an initial, or subsequent Licence period, then you are agreeing to the terms of this agreement which may change from time to time. (**Customer**).

BACKGROUND

The Supplier is the entire legal and/or beneficial owner and/or licensor of certain software products and is willing to license the Customer to use these products.

AGREED TERMS

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in this Licence.

Acceptance Date: the date on which the Customer is deemed to have accepted the Software under clause 2.2.

Affiliate: any business entity from time to time controlling, controlled by, or under common control with, either party.

Control: a business entity shall be deemed to "control" another business as defined in section 1124 of the Corporation Tax Act 2010.

Licence Fee: the Licence fee payable by the Customer to the Supplier under clause 5.

Intellectual Property Rights: all patents, copyrights, design rights, trade marks, service marks, trade secrets, know-how, data, database rights and other rights in the nature of intellectual property rights (whether registered or unregistered) and all applications for the same, anywhere in the world.

Licence Date: the date the Software was initially Licenced or the date the Licence was renewed.

Maintenance Release: release of the Software that corrects faults, adds functionality or otherwise amends or upgrades the Software, but which does not constitute a New Version.

Modification: any Maintenance Release.

New Version: any new version of the Software which from time to time is publicly marketed and offered for purchase by the Supplier in the course of its normal business, being a version which contains such significant differences from the previous versions as to be generally accepted in the marketplace as constituting a new or improved product.

Site: the premises from which the Customer carries out its business as notified to the Supplier in writing from time to time.

Software: computer software, utility software, website software, web-service software, computer data files, associated media, printed materials, local or online backups, and online or electronic documentation.

Third-Party Licences: Any Licences relating to any open-source software, including the general public Licence (if applicable), and any proprietary third-party software Licences.

Third-Party Software: Any open-source software relating to the supplier software and any proprietary third-party software.

- 1.2 **Holding company** and **subsidiary** mean a "holding company" and "subsidiary" as defined in section 1159 of the Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in subsections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee), whether by way of security or in connection with the taking of security, or (b) its nominee. In the case of a limited liability partnership which is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be amended so that: (a) references in sub sections 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and (b) the reference in section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights.
- 1.3 The headings in this Licence do not affect its interpretation. Except where the context otherwise requires, references to clauses and schedules are to clauses and schedules of this Licence.
- 1.4 Unless the context otherwise requires:
- (a) references to the Supplier and the Customer include their permitted successors and assigns;
 - (b) references to statutory provisions include those statutory provisions as amended or re-enacted;
 - (c) references to one gender includes a reference to the other genders; and
 - (d) references to "including" or "includes" shall be deemed to have the words "without limitation" inserted after them.
- 1.5 In the case of conflict or ambiguity between any provision contained in the body of this Licence and any provision contained in the schedules or appendices, the provision in the body of this Licence shall take precedence.
- 1.6 If the Software is provided to a Customer in any country listed in Schedule 1 then that schedule shall also apply. Despite clause 1.5, in the case of conflict or ambiguity between any provision contained in the body of this Licence and any provision contained in that schedule, the provision contained in the schedule shall prevail, but only in respect of the Customer's use of the Software in that country.
- 1.7 Words in the singular include the plural and those in the plural include the singular.

- 1.8 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors or permitted assigns.

2. DELIVERY, ACCEPTANCE AND INSTALLATION

- 2.1 The Supplier shall deliver one copy of the Software electronically or on disk or on CD-ROM to the Customer, or, in the case of a website or web service, delivery will be to a web server.
- 2.2 The Customer shall be deemed to have accepted the Software, and the full terms of this Software Licence Agreement, if the Customer commences operational use of the Software.

3. LICENCE

- 3.1 In consideration of the Licence Fee paid by the Customer to the Supplier, the Supplier grants to the Customer a non-exclusive Licence for the duration of the Licence purchased by the Customer to use the Software.
- 3.2 In relation to scope of use:
- (a) use of the Software shall be restricted to use of the Software in compiled executable form for the purpose of processing the data for the normal business purposes of the Customer (which shall not include allowing the use of the Software by, or for the benefit of, any person other than an employee of the Customer).
 - (b) "use of the Software" means loading the Software into temporary memory or permanent storage on the relevant computer.
 - (c) the Customer may not use the Software other than as specified in clause 3.1 and clause 3.2(a) without the prior written consent of the Supplier, and the Customer acknowledges that additional fees may be payable on any change of use approved by the Supplier.
 - (d) the Customer may not make any backup copies of the Software. If a copy of the Software is required it can be obtained from the Supplier.
 - (e) except as expressly stated in this clause 3, the Customer has no right (and shall not permit any third party) to copy, extract from, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Software in whole or in part.
- 3.3 Whilst using the Software, or after termination of use of the Software, whether termination be by the Customer or Supplier, the Customer:
- (a) will not try to duplicate any of the Software or Intellectual Property, will not help or allow any third party to try to duplicate the Software or Intellectual Property or compete against the Supplier, and will always keep the Software and Intellectual Property safe at all times.
 - (b) will not (without the previous consent in writing of the Supplier), whether as principal or agent, and whether alone or jointly with, or as a director, manager, partner, shareholder, employee or consultant of any other person, directly or indirectly carry on, or be engaged, concerned or interested in any business which is similar to and competes with any

business being carried on by the Supplier or create any products whose expression is substantially similar to the Software.

- (c) will not use any information about or from the Supplier or its Software in any manner which would be restricted by any copyright subsisting in it.
- (d) will not employ, either directly, indirectly, or contractually, any third party, even if they have previously been employed or associated with the Supplier, to work on the Software or any of its associated files or procedures, or any products whose expression is substantially similar to the Software.

3.4 The Customer shall not:

- (a) sub-license, assign or novate the benefit or burden of this Licence in whole or in part;
- (b) allow the Software to become the subject of any charge, lien or encumbrance; and
- (c) deal in any other manner with any or all of its rights and obligations under this agreement,

without the prior written consent of the Supplier, such consent not to be unreasonably withheld or delayed.

3.5 The Supplier may at any time sub-license, assign, novate, charge or deal in any other manner with any or all of its rights and obligations under this Licence.

3.6 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

3.7 The Customer shall:

- (a) keep a complete and accurate record of the Customer's copying and disclosure of the Licensed Software and its users, and produce such record to the Supplier on request from time to time;
- (b) notify the Supplier as soon as it becomes aware of any unauthorized use of the Licensed Software by any person;
- (c) pay, for broadening the scope of the Licences granted under this Licence to cover the unauthorized use, an amount equal to the Licence Fees which the Supplier would have levied (in accordance with its normal commercial terms then current) had it licensed any such unauthorised use on the date when such use commenced together with interest at the rate provided for in clause 5.3, from such date to the date of payment.

3.8 The Customer shall permit the Supplier to inspect and have access to any premises (and to the computer equipment located there) at or on which the Software is being kept or used (or was kept or used if the License has been terminated), and have access to any records kept in connection with this Licence, for the purposes of ensuring that the Customer is complying with the terms of this Licence, provided that the Supplier's inspection takes place during normal working hours.

3.9 The Licence has been entered into on the date when the Customer commences operational use of the Software.

3.10 Any discounts to the Licence Fee offered by the Supplier, and taken up by the Customer, are entirely at the Suppliers discretion and can be withdrawn by the Supplier at any time.

4. MODIFICATIONS AND MAINTENANCE RELEASES

4.1 The Supplier shall, where necessary, inform the Customer of any Modifications and may offer to sell such Modifications to the Customer.

4.2 The Supplier will provide the Customer with all relevant Maintenance Releases generally made available to its customers. The Customer shall install all Maintenance Releases as soon as reasonably practicable after receipt. A charge may be applicable for a maintenance release.

4.3 The Supplier may replace an existing Software product with a new Software product, which may or may not contain all the functionality of the older outgoing Software. The Supplier may choose to terminate support for the older Software and the Customer may be offered the new Software as a replacement for the older Software.

5. LICENCE FEES AND/OR FEES

5.1 The Customer shall promptly pay, without deduction, to the Supplier the Licence Fees as they fall due.

5.2 All sums payable under this Licence are exclusive of VAT or any relevant local sales taxes, for which the Customer shall be responsible.

5.3 If the Customer fails to pay any amount payable by it under this Licence the Supplier may charge the Customer interest on the overdue amount (payable by the Customer immediately on demand) from the due date up to the date of actual payment, after as well as before judgment, at the rate of 8% per annum above the base rate for the time being of Lloyds TSB. Such interest shall accrue on a daily basis and be compounded monthly. The Supplier may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998 and Late Payment of Commercial Debts Regulations 2002.

5.4 This Agreement and the Licence Fees do not include supply of, or access to, additional products and services, such as, but not limited to: the distribution of the Supplier's own, or third party, data files; communications through the Supplier's servers (generally known as DataExchange or DataX); postcode enquiries; SMS messaging; or websites, including Motex Claim Monitor. Some of these services may already be charged for, separate to the License Fee, and the Supplier reserves the right to start charging, or adjust charges, or suspend or terminate these additional products and services, as they feel necessary.

6. SUPPORT

6.1 The Supplier will provide reasonable off-site support for the Software to the Customer. Any support considered to be beyond reasonable, as defined at the sole discretion of the Supplier, may be charged for. The Suppliers decision of what support is reasonable is final.

- 6.2 The Supplier will not automatically provide support to the Customer for any third party products, even if the Software utilises the third party products. Such third party products include, but are not limited to, computer hardware/equipment and software, such as Windows operating systems and SQL Server. If the Supplier is asked to support or help with any third party products, the Supplier may: a) decline; or b) charge the Customer for the support.
- 6.3 The Supplier may charge the Customer for specialist support, such as on-site assistance, letterhead and form design, or management information and report generation/analysis.

7. CONFIDENTIALITY AND PUBLICITY

- 7.1 Each party shall, during the term of this Licence and thereafter, keep confidential all, and shall not use for its own purposes (other than implementation of this Licence) nor without the prior written consent of the other disclose to any third party (except its professional advisors or as may be required by any law or any legal or regulatory authority) any, information of a confidential nature (including, without limitation, trade secrets, information of commercial value, and Software functionality) which may become known to such party from the other party and which relates to the other party or any of its Affiliates, unless that information is public knowledge or already known to such party at the time of disclosure, or subsequently becomes public knowledge other than by breach of this Licence, or subsequently comes lawfully into the possession of such party from a third party. Each party shall use its reasonable endeavours to prevent the unauthorised disclosure of any such information.
- 7.2 The Customer may not, during the term of this Licence and thereafter, demonstrate or discuss the functionality of the Software to any organisation or individual outside of their own business, nor any software designers and developers within their own business, without the express written permission of the Supplier.
- 7.3 The terms of this Licence, and the Licence Fees, are confidential and may not be disclosed by the Customer without the prior written consent of the Supplier.
- 7.4 The Supplier may make public notice of the Customer's subscription and/or use of the Supplier's Software, including use of the Customer's name and logos, on the Supplier's own website and advertisements.
- 7.5 The Supplier shall be entitled to place images (including the Supplier's logo) and/or text, as the Supplier see fit, stating the Supplier's copyright and software agreement URL on the Software.

8. EXPORT

- 8.1 Neither party shall export, directly or indirectly, any technical data acquired from the other party under this agreement (or any products, including software, incorporating any such data) in breach of any applicable laws or regulations (Export Control Laws), including United States export laws and regulations, to any country for which the government or any agency thereof at the time of export requires an export Licence or other governmental approval without first obtaining such Licence or approval.

8.2 Each party undertakes:

- (a) contractually to oblige any third party to whom it discloses or transfers any such data or products to make an undertaking to it in similar terms to the one set out above; and
- (b) if requested, to provide the other party with any reasonable assistance, at the reasonable cost of the other party, to enable it to perform any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with any Export Control Laws.

9. SUPPLIER'S WARRANTIES

- 9.1 The Supplier does not warrant that the use of the Software, or any additional products and services, will be uninterrupted or error-free.
- 9.2 The Customer accepts responsibility for the selection of the Software to achieve its intended results and acknowledges that the Software has not been developed to meet the individual requirements of the Customer.
- 9.3 Any Open-Source or Third-Party Software provided by the Supplier may be used according to the terms and conditions of the specific Licence under which the relevant Open-Source or Third-Party Software is distributed, but is provided "as is" and expressly subject to the disclaimer in clause 9.4.
- 9.4 All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this Licence or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.

10. LIMITS OF LIABILITY

10.1 Except as expressly stated in clause 10.2:

- (a) the Supplier shall have no liability for any losses or damages which may be suffered by the Customer (or any person claiming under or through the Customer), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories, but not limited to just the below categories:
 - (i) special damage even though the Supplier was aware of the circumstances in which such special damage could arise;
 - (ii) loss of profits;
 - (iii) business interruption;
 - (iv) loss of anticipated savings;
 - (v) loss of business opportunity;
 - (vi) loss of goodwill;
 - (vii) loss or corruption of data;
 - (viii) any other loss.

- (b) the total liability of the Supplier, whether in contract, tort (including negligence) or otherwise and whether in connection with this Licence or any collateral contract, shall in no circumstances exceed a sum equal to the current Licence Fee paid; and
- (c) the Customer agrees that, in entering into this Licence, either it did not rely on any representations (whether written or oral) of any kind or of any person other than those expressly set out in this Licence or (if it did rely on any representations (whether written or oral) not expressly set out in this Licence) that it shall have no remedy in respect of such representations and (in either case) the Supplier shall have no liability otherwise than in accordance with the express terms of this Licence.

10.2 The exclusions in clause 10.1 shall apply to the fullest extent permissible at law, but the Supplier does not exclude liability for:

- (a) death or personal injury caused by the negligence of the Supplier, its officers, employees, contractors or agents;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982.

10.3 The Supplier shall have no responsibility nor liability to the Customer for any investments or purchases the Customer makes, such as, but not limited to, the purchase of computer equipment, network installations, and IT services, to accommodate the Software. Any such investments or purchases are the sole responsibility of the Customer.

10.4 All dates supplied by the Supplier for the delivery of the Software or the provision of Services shall be treated as approximate only. The Supplier shall not be liable for any loss or damage arising from any delay in delivery beyond such approximate dates.

10.5 All references to "the Supplier" in this clause 10 shall, for the purposes of this clause and clause 19 only, be treated as including all employees, subcontractors and suppliers of the Supplier and its Affiliates, all of whom shall have the benefit of the exclusions and limitations of liability set out in this clause, in accordance with clause 19.

10.6 The Customer shall comply with the Third-Party Licences and shall indemnify and hold the Supplier harmless against any loss or damage which it may suffer or incur as a result of the Customer's breach of such terms.

10.7 The Supplier may treat the Customer's breach of any Third-Party Licence as a breach of this Licence.

11. INTELLECTUAL PROPERTY RIGHTS

11.1 The Customer acknowledges that all Intellectual Property Rights in the Software and any Modifications or New Versions belong and shall belong to the Supplier, or care of the Supplier, and the Customer shall have no rights in or to the Software other than the right to use it in accordance with the terms of this Licence.

11.2 If any third party makes a Claim, or notifies an intention to make a Claim against the Customer, the Customer will:

- (a) as soon as reasonably practicable, giving written notice of the Claim to the Supplier, specifying the nature of the Claim in reasonable detail;
- (b) not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Supplier (such consent not to be unreasonably conditioned, withheld or delayed);
- (c) give the Supplier and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Customer, so as to enable the Supplier and its professional advisers to examine them and to take copies (at the Supplier's expense) for the purpose of assessing the Claim; and
- (d) take such action as the Supplier may reasonably request to avoid, dispute, compromise or defend the Claim.

11.3 If any Infringement Claim is made, or in the Supplier's reasonable opinion is likely to be made, against the Customer, the Supplier may at its sole option and expense:

- (a) procure for the Customer the right to continue using, developing, modifying or maintaining the Software (or any part thereof) in accordance with the terms of this Licence;
- (b) modify the Software so that it ceases to be infringing;
- (c) replace the Software with non-infringing software; or
- (d) terminate this Licence immediately by notice in writing to the Customer and refund any of the Licence Fee paid by the Customer as at the date of termination (less a reasonable sum in respect of the Customer's use of the Software to the date of termination) on return of the Software and all copies thereof,

provided that if the Supplier modifies or replaces the Software, the modified or replacement Software must comply with the warranties contained in clause 9 and the Customer shall have the same rights in respect thereof as it would have had under those clauses had the references to the date of this Licence been references to the date on which such modification or replacement was made.

11.4 This clause 11 constitutes the Customer's exclusive remedy and the Supplier's only liability in respect of Claims and, for the avoidance of doubt, is subject to clause 10.1.

12. DURATION AND TERMINATION

12.1 The Licence is usually granted on a monthly or quarterly basis, as determined by the Customer's agreed payment schedule. The Licence is renewed each time the Customer pays a Licence Fee. The Supplier may choose to decline to accept a Licence renewal, thereby terminating the Customer's Licence to use the Software.

12.2 The Supplier may offer the Customer an extended Licence period, such as an annual Licence, even if the Customer's Licence Fees continue to be paid monthly or quarterly. However, an extended Licence is offered on condition that:

- (a) the Customer does not reduce the number of Licences that have been granted during the extended Licence period and the Customer is committed to paying the full annual Licence Fees for the whole of the extended Licence period;
- (b) any discounts to the Licence Fee granted under an extended Licence period cease at the end of the extended Licence period;
- (c) offer and acceptance of an extended Licence period does not automatically mean an extended Licence period will be offered, by the Supplier, in the future; and
- (d) the Supplier may withdraw an extended Licence period offer, or terminate a current extended Licence, for any reason and at any time. If the Supplier terminates an existing extended Licence, and the Customer has paid their Licence Fees for the whole of the extended Licence period, the Supplier will refund, pro-rata, any Licence Fees for any unused extended Licence period unless the Supplier has terminated because the Customer is in breach of contract. On termination of an extended Licence period, the Supplier may offer the Customer a new Licence on standard Licence terms.

12.3 Without prejudice to any rights that have accrued under this agreement or any of its rights or remedies, either party may at any time terminate this agreement with immediate effect by giving written notice to the other party if:

- (a) the other party fails to pay any amount due under this agreement on the due date for payment;
- (b) the other party commits a material breach of any term of this agreement (other than failure to pay any amounts due under this agreement) and (if such breach is remediable) fails to remedy that breach within a period of 7 days after being notified to do so;
- (c) the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
- (d) the other party suspends, or threatens to suspend or withhold, payment of its Licence Fees or debts or is unable to pay its licence Fees or debts as they fall due or admits inability to pay its Licence Fees or debts or (being a company) is deemed unable to pay its Licence Fees or debts within the meaning of section 123 of the Insolvency Act 1986;
- (e) the other party 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 its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (f) 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 that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

- (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
- (h) a floating charge holder over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (j) the other party (being an individual) is the subject of a bankruptcy petition or order;
- (k) a creditor or encumbrancer of the other party 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 its assets and such attachment or process is not discharged within 14 days;
- (l) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 12.3(d) to clause 12.3(j) (inclusive); or
- (m) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.

12.4 Termination by either party in accordance with the rights contained in this clause 12 shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.

12.5 On notice of termination for any reason:

- (a) the Customer shall, immediately upon receipt of invoice, pay to the Supplier any sums, in full and without deduction, due to the Supplier under the Licence and this Agreement, including, but not limited to, all outstanding unused Licence Fees including (if an extended Licence period has been agreed) all Licence Fees through to the full term of the extended period. The Supplier is entitled to immediately suspend use of the Software until the outstanding Licence Fees have been paid in full.

12.6 On termination for any reason:

- (a) all rights granted to the Customer under this Licence shall cease;
- (b) the Customer shall cease all activities authorised by this Licence;
- (c) the Customer shall immediately destroy or return to the Supplier (at the Supplier's option) all copies of the Software then in its possession, custody or control and, in the case of destruction, certify to the Supplier that it has done so.

12.7 Any provision of this agreement which expressly or by implication is intended to come into or continue in force on or after termination of this agreement shall remain in full force and effect.

13. **WAIVER**

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the

further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

14. REMEDIES

Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

15. ENTIRE AGREEMENT

15.1 This Licence, the schedules and the documents annexed as appendices to this Licence or otherwise referred to herein contain the whole agreement between the parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter.

15.2 Each party acknowledges that, in entering into this Licence and the documents referred to in it, it does not rely on any statement, representation, assurance or warranty (whether it was made negligently or innocently) of any person (whether a party to this Licence or not) other than as expressly set out in this Licence or those documents.

15.3 Each party agrees that the only rights and remedies available to it arising out of or in connection with a Representation shall be for breach of contract as expressly provided in this Licence.

15.4 Nothing in this clause shall limit or exclude any liability for fraud.

16. VARIATION

16.1 This Agreement replaces all previous software agreements and end-user Licence agreements.

16.2 If the Customer renews the Licence for the Software product at the end of an initial, or a subsequent Licence period, then the Customer is again agreeing to the terms of this Agreement, which may change from time to time.

16.3 If the Customer has agreed an extended Licence period, such as annually, then the Customer is again agreeing to the terms of this Agreement, which may change from time to time, with each Licence Fee payment, usually being monthly or quarterly, within the extended Licence period.

16.4 The latest copy of this Agreement, which the Supplier recommends the Customer review before each Licence renewal and/or Licence Fee payment, is available from the Supplier's website, at the following URL: <http://www.motex.co.uk/InternetFiles/EULA.pdf>

17. SEVERANCE

17.1 If any court or competent authority finds that any provision of this agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent

required, be deemed to be deleted, and the validity and enforceability of the other provisions of this agreement shall not be affected.

- 17.2 If any invalid, unenforceable or illegal provision of this agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable .

18. COUNTERPARTS

This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this agreement, but all the counterparts shall together constitute the same agreement.

19. THIRD-PARTY RIGHTS

A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement, but this does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

20. NO PARTNERSHIP OR AGENCY

Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.

21. FORCE MAJEURE

Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control, and in such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of delay or non-performance continues for 4 weeks, the party not affected may terminate this agreement by giving 7 days written notice to the other party.

22. NOTICES

- 22.1 Any notice or other communication required to be given under this agreement shall be in writing and shall be delivered personally, or sent by pre-paid first-class post or recorded delivery or by commercial courier, to each party required to receive the notice or communication or as otherwise specified by the relevant party by notice in writing to each other party.

- 22.2 Any notice or other communication shall be deemed to have been duly received:

- (a) if delivered personally, when left at the address;
- (b) if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting;

- (c) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed;

22.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

23. GOVERNING LAW AND JURISDICTION

23.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

23.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

SCHEDULE 1

MOTEX COUNTRY SPECIFIC AMENDMENTS

MOTEX STANDARD LICENCE AGREEMENT

MOTEX SOFTWARE APPLICATION

I wish to sign up the below mentioned company for the selected Software and I state that:

- (a) I have the authority to make this commitment/purchase on behalf of the company named below; and;
- (b) I fully accept the terms and conditions of the Motex Software Licence Agreement (available online at <http://www.motex.co.uk/InternetFiles/EULA.pdf>).

Select Required Licences:	Software Systems	Quantity
	EasiEst BES - Bodyshop Estimating System	
	EasiEst BMS - Bodyshop Management System Server	
	EasiEst BMS - Bodyshop Management System Workstations	
	EasiEst EIS - Engineer's Inspection System	
	EasiEst EMS - Engineer's Management System Server	
	EasiEst EMS - Engineer's Management System Workstations	
	EasiEst ETS - Electronic Trading System	
	Claim Monitor Progress Website	
	Other Website Development/Hosting	

Company Name: _____

Contact Name: _____

Position: _____

Direct Email Address: _____

Direct Telephone Number: _____

Signed: _____

Date: _____

SCHEDULE 3
MOTEX ANNUAL LICENCE AGREEMENT
EXTENDED LICENCE

OVERVIEW

As Customers may be aware, the Software is normally offered on short term rolling contracts, with Licence Fees being charged monthly or quarterly depending upon the Software version.

However, Motex has pleasure in being able to offer an extended Licence Fees to qualifying Customers who wish to commit to the Software for a whole year. Customers will still be invoiced monthly or quarterly, but will be afforded an annual Licence to use the Software.

For the avoidance of doubt, Customers afforded an annual Licence are committing themselves to pay their Licence Fees for a full twelve months.

MOTEX ANNUAL LICENCE APPLICATION

I wish my company to take advantage of the Motex Annual Licence and I state that:

- (a) I have the authority to make this commitment/purchase on behalf of the company named below; and
- (b) I fully accept the terms and conditions of the Motex Software Licence Agreement (available online at <http://www.motex.co.uk/InternetFiles/EULA.pdf>) and I have noted, in particular, clause 12.2.

Select Required Licences:	Software Systems	Quantity
	EasiEst BES - Bodyshop Estimating System	
	EasiEst BMS - Bodyshop Management System Server	
	EasiEst BMS - Bodyshop Management System Workstations	
	EasiEst EIS - Engineer's Inspection System	
	EasiEst EMS - Engineer's Management System Server	
	EasiEst EMS - Engineer's Management System Workstations	
	EasiEst ETS - Electronic Trading System	
	Claim Monitor Progress Website	
	Other Website Development/Hosting	

Company Name: _____

Contact Name: _____

Position: _____

Direct Email Address: _____

Direct Telephone Number: _____

Signed: _____

Date: _____

MOTEX ONLINE BACKUP AGREEMENT

OVERVIEW

An Online Backup, also known as a Remote Backup, is a method of offsite data storage in which data is regularly backed up to a remote server or computer with a network connection.

The rationale behind any online backup service is simple. By frequently backing up data on to a remote system, the risk of catastrophic data loss as a result of fire, theft, file corruption, or other disaster is greatly reduced.

Therefore, the Motex Online Backup (additional subscription required) could be a very valuable resource should you suffer severe data loss and we highly recommend the service.

However, it should be appreciated by all Customers that reliance on the Motex Online Backup only, for data backups, is not advisable because no single backup procedure is bullet-proof; and due to the potential size of Customer's data (when considering files such as images and associated or scanned documents) not all the data is backed up.

Therefore, it is strongly recommended that Customers regularly perform their own internal backup procedures and use the Motex Online Backup to complement those in-house operations.

MOTEX ONLINE BACKUP APPLICATION

I wish my company to take advantage of the Motex Online Backup and:

- (a) I have the authority to make this commitment/purchase on behalf of the company named below;
- (b) I understand what the Motex Online Backup Service is designed to do;
- (c) I understand what my company should do to enable the service;
- (d) I understand that I should also invoke an internal backup procedure; and
- (e) I fully accept the terms and conditions of the Motex Software Licence Agreement (available online at <http://www.motex.co.uk/InternetFiles/EULA.pdf>).

Company Name:

Contact Name:

Position:

Direct Email Address:

Direct Telephone Number:

Signed:

Date:

MOTEX DISASTER RECOVERY INFORMATION

OVERVIEW

Most companies and organisations recognise that software is a major tool for their lines of business these days and, as such, certain steps need to be taken to protect your I.T. investment and maximise continuity of function in the event of a disaster. This information provides an overview and some of the steps necessary to protect this important part of your business, and can be used as a template for organising your own disaster recovery plan.

However, because Motex does not supply your computer hardware, network infrastructure, or third party software, we can not advise as to the suitability or accuracy of this information, nor the recovery of non-Motex products, and we suggest that you speak to your systems suppliers for detailed disaster recovery information for the aforementioned items.

DISASTER RECOVERY OBJECTIVE

For the purposes of this document, a disaster is defined as an incident which results in the loss of computer processing. A disaster can result from a number of accidental, malicious, or environmental events, such as fire, flood, human error, software and hardware failure, etc...

The primary objective of any disaster recovery plan is to try to minimise interruption to your company/organisation's normal operation and ensure a quick recovery from a disaster.

DISASTER RECOVERY ESSENTIALS: INVENTORY

To be able to recover from a disaster, you should first create a central inventory of all the computer and network equipment, and software used within your company/organisation. For each piece of I.T. equipment, an inventory should contain information such as:

- Manufacturer
- Model and/or Version
- Serial Number
- Licence Number
- User and/or Location
- Specifications
- Description

It is imperative that the central inventory is regularly and accurately maintained, with all new software and hardware added as it is purchased and introduced.

It is also recommended that you conduct regular inventory audits of your systems to ensure continuing inventory integrity and relevance, and that a full copy of the inventory is maintained off-site and updated regularly.

DISASTER RECOVERY ESSENTIALS: INSTALLATION MEDIA

Whilst Motex can provide new installation media for your Motex products, this may not be true for other software you rely upon.

Therefore, non-Motex software installation media should be easily located by staff, yet needs to be protected in the event of a disaster as well. To ensure safety in the event of a disaster, you should locate copies of all installation media in a protected off-site location, which should be updated as required.

Subject to your software licence agreements, one original of the installation media for each software title should be set aside and taken to the off-site repository together with a list of licence numbers you hold. This media (CD, user manuals, etc...) should always be an original so that it can provide additional proof of ownership if needed. The off-site repository should be updated as often as required to be maintained appropriately and accurately.

DISASTER RECOVERY ESSENTIALS: NOTIFICATIONS & CONTACTS LIST

In the event of a disaster, you should notify all relevant companies and people. These should, at least, be your company/organisation line management and the entities that will help you recover from a disaster. Therefore, a list of entities to contact in the event of a disaster is essential.

A notifications list should contain information such as:

- Company Information
- Contact Name
- Telephone Number
- Facsimile Number
- Email Address
- Product Information

DISASTER RECOVERY ACTION: NOTIFICATION

After a disaster has occurred, and the situation is under control, insomuch as there is no longer a risk to life and/or property, you can begin to action your disaster recovery plan.

The first step is to evaluate the situation and identify the affected equipment and/or applications. If the disaster has only effected a single software application, then it is highly likely that you will only need to contact your company/organisation line management and the support team and/or vendor for the affected product.

However, if the disaster has affected multiple applications, a whole computer, or the entire network, then you will probably need to contact the majority of the entities on your notification list. Also, consider the order in which you contact these entities, as software can not be recovered until computer hardware and network infrastructure is back in working order.

DISASTER RECOVERY ACTION: NON-MOTEX SYSTEMS

Whilst Motex has provided this disaster recovery information, we are not aware of, nor involved with, all the non-Motex hardware and software you have on-site and, therefore, Motex can only help recover Motex

products after key non-Motex systems, such as your network, computer hardware, and third party software has already been recovered.

For example, Motex is not responsible for items such as hardware and network failures, or third party software such as Windows operating systems and SQL Server, even if your Motex software utilised these items.

PLEASE NOTE: All non-Motex systems must be fully operational before Motex software and data can be recovered from a disaster.

DISASTER RECOVERY ACTION: MOTEX SOFTWARE

As already mentioned, Motex is not responsible for your company/organisation's hardware, network, or non-Motex software. Therefore, if your Motex software is not functioning after a disaster, you should first determine if this is because of an item that is beyond Motex's control, such as a computer or network failure, SQL Server error, etc... and inform the relevant party to recover the affected equipment.

Once your non-Motex systems are working properly, you should test your Motex applications to assess any damage to them, including the software functionality, data files, and communications. If your Motex software is still not functional, please contact Motex for help recovering the applications.

Motex has all necessary Motex Software installations, which can be easily downloaded from our FTP servers for almost instant delivery. After delivery, your Motex applications can be reinstalled to your computers.

DISASTER RECOVERY ACTION: MOTEX DATA

Motex recommends performing two backups, a local backup which will back up all/most of your Motex data files, and the Motex Online Backup which will store only your main databases off-site, on our remote servers (additional subscription required).

From these backups Motex should be able to recover all (or most) of your Motex data, so please ensure backups are run successfully and regularly.

MOTEX DISASTER RECOVERY CHARGES & TERMS

Whilst we at Motex hope you never have to deal with an I.T. disaster, and we will do everything within our power and scope to help you recovery from a disaster, Motex does reserve the right to charge for recovering your Motex applications and/or data, although in most simple cases charges may not be necessary.

Also, Motex's help in recovering your systems from a disaster is subject to the terms and conditions of the Motex Software Licence Agreement.