

- (b) the Subcontract Services and all materials comprised in them will correspond as to description, quality and condition with the requirements of the Subcontract and will be of sound manufacture and workmanship;
 - (c) the Subcontract Services are integrated with the designs of the Purchaser, the Service Provider and others as specified in the Subcontract;
 - (d) he has exercised and will continue to exercise all reasonable skill, care and diligence in the design of the Subcontract Services insofar as they have been or will be designed by or on behalf of the Subcontractor;
 - (e) the Subcontract Services will on Completion comply with all Applicable Laws and all relevant LU Standards;
 - (f) he shall not commit a Prohibited Act and/or Safety Breach; and
 - (g) the Subcontract Services will be carried out and completed timeously in accordance with the time constraints set out in the Subcontract.
5. The Subcontractor warrants and undertakes to the Purchaser that he has maintained and will continue to maintain all insurances required to be maintained pursuant to the terms of the Subcontract and that insofar as he is responsible for the design of the Subcontract Services, he has professional indemnity insurance with a limit of indemnity of not less than £[] in respect of each and every claim which may be made against the Subcontractor in relation to the Subcontract Services. The Subcontractor shall maintain such professional indemnity insurance for a period of 12 years from Fleet Acceptance (as defined in the Agreement) provided such insurance remains available at commercially reasonable rates and shall notify the Purchaser forthwith if such insurance ceases to be so available. When deciding whether such insurances are available at commercially reasonable rates, no account shall be taken of any increase in the premium or imposition of terms which arise as a result of the Subcontractor's insurance claims record.
6. As and when reasonably requested by the Purchaser, the Subcontractor shall produce for inspection documentary evidence that the insurances referred to in Clause 5 are being properly maintained and that payment has been made of the last premiums due in respect of such insurances.
7. To the extent that the intellectual property rights in any and all Documents have not already vested in the Purchaser or the Service Provider, the Subcontractor grants to the Purchaser a non-exclusive, perpetual, irrevocable, royalty-free, sub-licensable and transferable licence to copy and make full use of any and all Documents and all amendments and additions to them and any works, designs or inventions of the Subcontractor incorporated or referred to in them for the following purposes:
- (a) understanding the Services;
 - (b) the testing, commissioning, operation, maintenance, modification, refurbishment or sale of the Parts and/or Spares or any related activity;
 - (c) complying with all Applicable Laws, LU Standards and all Relevant Consents;
 - (d) using and copying the Manuals and/or Manufacturer Documentation in order to perform any of the above;

- (e) training personnel to carry out any of the activities described in Paragraphs 7(a), 7(b) and 7(c) above;
- (f) inviting tenders for any of the activities described in Paragraph 7(a) to 7(e) inclusive above;
- (g) extending, interfacing with, integrating with, and adjusting the services and/or the services of third parties;
- (h) in the event of termination of both the Contract (other than for a Purchaser Event of Default) and the Subcontract, procuring fulfilment and performance of the Subcontractor's obligations under the Subcontract, including the manufacture of any Parts and/or Spares or other equipment for use in connection with the Replacement Systems;
- (i) enabling the Purchaser to carry out the operation, maintenance, repair, renewal and enhancement of the LUL Network;
- (j) enabling the Purchaser to perform his function and duties as Infrastructure Manager (as defined in the Railways and Other Guided Transport Systems (Safety Regulations 2006) and Operator of the LUL Network; and
- (k) the Purchaser performing its obligations under the Contract.

provided always that the Subcontractor shall not be liable for the consequences of any use of the Documents as aforesaid for any other purpose.

8. The Subcontractor agrees:
- (a) on request at any time to give the Purchaser or any persons authorised by the Purchaser access to the material referred to in Clause 7 and at the Purchaser's expense to provide copies of any such material; and
 - (b) at the Subcontractor's expense to provide the Purchaser with a set of all such material on Completion of the Subcontract Services.
9. If called upon to do so by the Purchaser, the Subcontractor shall provide the Purchaser with such information relating to the Subcontract Services as it may reasonably require including without limitation copies of and extracts from Documents prepared or provided by the Subcontractor for the purposes of the Services provided that neither the provision of such information nor any inspection of the Services by the Purchaser nor the approval by the Purchaser of any material shall limit or discharge, or be deemed to limit or discharge the obligations of the Subcontractor under the Subcontract or relieve the Subcontractor from any liability which he has in relation to the Subcontract Services.
10. The Subcontractor warrants and undertakes to the Purchaser that he shall maintain and retain the Minimum Records for a minimum of twelve (12) years from Completion of the Services with respect to all matters for which the Subcontractor is responsible under the Subcontract. The Subcontractor further warrants and undertakes to the Purchaser that the Subcontract contains open-book audit rights in favour of the Purchaser and its authorised representatives and that he shall undertake his obligations and exercise his rights under the Subcontract on an open-book basis. The Purchaser and his authorised representatives may from time to time audit on an open-book basis and check and take copies of and extracts from any document or

record of the Subcontractor including, without limitation, the Minimum Records. The Subcontractor further warrants that it shall promptly provide all reasonable co-operation in relation to any audit or checking including, without limitation, granting access to premises, equipment, systems and senior personnel and making documents available. Without prejudice to the foregoing, the Subcontractor acknowledges and agrees that the Purchaser may audit and check any and all records as are necessary in order to monitor compliance with the Subcontractor's obligations under the Subcontract with respect to Prohibited Acts and Safety Breaches at any time during performance of the Subcontract and during the twelve (12) years thereafter.

11. The Subcontractor shall provide such assistance to the Purchaser as it may reasonably require in connection with the Subcontract Services.
12. In the event that the Contract or the employment of the Service Provider thereunder is determined for any reason whatsoever including but not limited to the insolvency or winding-up of the Service Provider (voluntary or otherwise), the Subcontractor shall without allowing any break or intermission to occur in the performance of his duties:
 - (a) continue to observe and carry out his obligations under the Subcontract and this Deed;
 - (b) if so required by notice in writing from the Purchaser treat the Purchaser as Purchaser under the Subcontract to the exclusion of the Service Provider whereupon all rights and obligations of the Service Provider under the Subcontract shall thereafter be exercisable and performed by the Purchaser; and
 - (c) accept and enter into any deeds or other documents as are required to put into legal effect any further novation of the Subcontract reasonably required by the Purchaser.
- 13.1 The Subcontractor warrants and undertakes to the Purchaser that he will promptly inform the Purchaser of any default by the Service Provider under the Subcontract and that he will not, without first giving the Purchaser at least twenty one (21) days' notice in writing, exercise any right he may have to terminate the Subcontract or to treat the same as having been repudiated by the Service Provider or to suspend performance of his obligations under the Subcontract.
- 13.2 The Subcontractor's right to terminate the Subcontract or to treat the same as having been repudiated or to suspend performance of his obligations thereunder shall cease if within the period of the aforesaid notice and subject to Clause 14 hereof the Purchaser shall have given notice in writing to the Subcontractor requiring the Subcontractor to accept the instructions of the Purchaser or its appointee to the exclusion of the Service Provider in respect of the carrying out and completion of the Subcontract Services upon the terms of the Subcontract.
14. The provisions of Clauses 12 and 13 hereof are conditional upon any notice given by the Purchaser pursuant thereto stating that the Purchaser or its appointee accepts liability for payment of the last unpaid invoice submitted by the Subcontractor. Upon the issue of any such notice by the Purchaser, the Subcontract shall continue in full force and effect as if no right of termination on the part of the Subcontractor had arisen and the Subcontractor shall be liable to the Purchaser or its appointee under the Subcontract in lieu of its liability to the Service Provider. If any notice given by the Purchaser under Clauses 12 or 13 requires the Subcontractor to accept the instructions of the Purchaser's appointee, the Purchaser shall be

- liable to the Subcontractor as guarantor for the payment of all sums from time to time due to the Subcontractor from the Purchaser's appointee. For the avoidance of doubt neither the Purchaser nor his appointee shall be liable for any work carried out prior to the date of the Purchaser's notice.
15. The Service Provider has agreed to be a party to this Deed for the purposes of acknowledging that the Subcontractor shall not be in breach of the Subcontract by complying with the obligations imposed on it by Clauses 12 or 13 hereof.
 16. This Deed may be assigned by the Purchaser to any member of the TfL Group without limitation and otherwise to any other person on two occasions without the consent of the Subcontractor being required and the Subcontractor shall do all such acts, deeds and things as may be reasonably necessary to give effect to any such assignment. No further assignment shall be permitted without the consent of the Subcontractor.
 17. The Subcontractor shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clause 16 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening) by reason that such person is an assignee and not a named promisee under this Deed.
 18. The liability of the Subcontractor under this Deed shall cease twelve (12) years following Completion of the whole of the Services.
 19. The Subcontractor hereby covenants that if required by the Purchaser it will enter into further deeds of warranty with all and each of such persons who shall acquire or agree to acquire an interest in the whole or any part of the Subcontract Services. Each such deed of warranty shall be in the same form mutatis mutandis as this Deed or in such substantially similar form as may reasonably be required by the Purchaser.
 - 20.1 Without limitation to Clause 2 above, the Subcontractor hereby warrants to the Purchaser that:
 - (a) except as provided under deeds of warranty required pursuant to the Subcontract, it shall not, without the prior written approval of the Purchaser, at any time for any reason disclose to any person or publish or make any statement concerning the Subcontract, this Deed or the project to which the Subcontract Services relate;
 - (b) it shall treat all information obtained under, arising from or in connection with the Subcontract, this Deed and the project as confidential, and that other than for the purpose of providing the Subcontract Services, it shall not disclose any information or documents concerning the Subcontract to any other person; and
 - (c) it shall not, without the prior written consent of the Purchaser, disclose any information obtained by it concerning the Purchaser or the TfL Group to any other person.
 - 20.2 The Purchaser may require as a precondition to the granting of such consent that any such third party provides a confidentiality undertaking in terms satisfactory to the Purchaser.
 - 20.3 Clause 20.1 does not apply to the disclosure of:

- (a) any information which is already in the public domain at the time of its disclosure other than by breach of these provisions,
 - (b) any information disclosed by the Subcontractor to any Connected Persons provided that such recipients agree in writing to be bound by the terms of this confidentiality provision; and
 - (c) any information which is required to be disclosed by any Applicable Laws, LU Standards or statutory requirement, the regulations of any stock exchange, any taxation authorities or by an order of a court or other tribunal of competent jurisdiction or any relevant regulatory body.
- 20.4 The Subcontractor shall procure that the Connected Persons comply with the provisions of this Clause 20 and is responsible to the Purchaser for any act or omission of any Connected Person in breach of such obligations.
- 20.5 The Subcontractor shall notify the Purchaser promptly if the Subcontractor becomes aware of any breach of confidence by a Connected Person and shall give the Purchaser all assistance the Purchaser may reasonably require in connection with any proceedings the Purchaser may bring or other steps the Purchaser may take against that Connected Person or any other person for such breach of confidence.
- 20.6 The Subcontractor acknowledges that damages would not be an adequate remedy for any breach of this Clause 20 by the Subcontractor and that (without prejudice to all other remedies to which the Purchaser may be entitled to as a matter of law) the Purchaser shall be entitled to any form of equitable relief to enforce the provisions of this Clause 20.
- 20.7 At the Purchaser's request and in any event upon the termination or expiry of the Subcontract, the Subcontractor shall promptly deliver to the Purchaser or destroy as the Purchaser may direct all documents and other materials in the possession, custody or control of the Subcontractor (or the relevant parts of such materials) that bear or incorporate the whole or any part of the confidential information and if instructed by the Purchaser in writing, remove all electronically held confidential information, including the purging of all disk-based confidential information and the reformatting of all disks.
- 21.1 The Subcontractor shall owe no greater obligations to the Purchaser than he owes to the Service Provider under the Subcontract.
- 21.2 The Subcontractor shall be entitled in any action or proceedings by the Purchaser to rely on any limitation in the Subcontract and to raise the equivalent rights in defence of liability as he would have against the Service Provider thereunder.
22. The rights and benefits conferred upon the Purchaser by this Deed are in addition to any other rights and remedies the Purchaser may have against the Subcontractor including without limitation any remedies in negligence.

- 23. The Service Provider agrees that he will not take any steps which would prevent or hinder the Purchaser from exercising his rights under this Deed and confirms that the rights of the Purchaser in Clauses 12 and 13 override any obligations of the Subcontractor to the Service Provider under the Subcontract.
- 24. Any notice to be given hereunder shall be deemed to be duly given if it is in writing and delivered by hand at or sent by registered post to the registered office or principal place of business in the United Kingdom for the time being of the party to be served and in the case of any such notice sent by registered post shall be deemed to have been received 48 hours after being posted.
- 25.1 Any dispute or difference arising out of or in connection with this Deed may be referred to adjudication in accordance with Schedule 10 (*Form of Deed of Warranty*) of the Contract which shall be deemed to be included in this Deed as if it were recited herein in full (with the necessary changes).
- 25.2 The Adjudicator's decision shall be binding on the parties until the dispute or difference is finally determined by the Courts in accordance with Clause 25.3.
- 25.3 The Courts of England and Wales shall have jurisdiction over any dispute or difference arising out of or in connection with this Deed. The Law of England and Wales shall be the proper law of this Deed.
- 26. Nothing in this Deed confers or is intended to confer on any third party any benefit or the right to enforce any term of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999.

IN WITNESS whereof this Deed has been executed and unconditionally delivered as a Deed by the parties the day and year first above written.

THE COMMON SEAL of
LONDON UNDERGROUND LIMITED

was affixed to **THIS DEED**

in the presence of:

Signature of Authorised Signatory

Print name of Authorised Signatory

THE COMMON SEAL of
[THE SUBCONTRACTOR]

was affixed to THIS DEED

in the presence of:

Signature of Director

Print name of Director

Signature of Director/Secretary

Print name of Director/Secretary

EXECUTED AND DELIVERED AS

A DEED by

[THE CONTRACTOR]

acting by:

Signature of Director [Redacted]

Print name of Director [Redacted]

Signature of Director/Secretary [Redacted]

Print name of Director/Secretary [Redacted]



ANNEX
(Subcontract Services)



Latvijas Republikas
Valdības kase

Schedule 11
Form of Performance Bond

(Letterhead of Guarantor)

To: Transport for London (its successors in title and assigns)

Contract Bond No. [•]

1. Whereas our clients [•] (the "**Supplier**") have entered into a contract with you dated [•] (the "**Contract**") in respect of [•], we [•] (the "**Guarantor**", which term shall include our successors in title and assigns) hereby irrevocably undertake as a primary obligation upon first demand in writing made by you upon us from time to time or at any time to pay to you on each occasion the sum demanded by you within five (5) banking days upon service of your demand.

PROVIDED THAT:

2. This Bond shall come into force on the date hereof.
3. Any demand hereunder shall be substantially in the form of either Annex 1A or Annex 2 to this Bond, and as between you and us the facts set out in that demand shall be: (a) deemed to be true and (b) accepted by us as conclusive evidence for the purposes of this Bond that the amount claimed in the demand is due and payable to you hereunder, it being our intention that the event upon which payment must be made hereunder is the service of your demand without any rights on our part to raise any objections, irrespective of the validity or the effectiveness of the Contract and the obligations arising thereunder and irrespective of the underlying facts or their significance under the Contract.
4. Any demand in the form of Annex 1A to this Bond shall be accompanied by a copy of a letter from you sent to the Supplier by first class recorded delivery fourteen (14) or more days before the date of the demand, substantially in the form of ANNEX 1B to this Bond.
5. All sums payable under this Bond shall be paid in pounds sterling to such bank account as may be specified in your demand in immediately available funds, free of any restriction or condition and free and clear of and without any deduction or withholding whether for or on account of tax, by way of set-off, or otherwise, except to the extent required by law.
6. For the purpose of this paragraph 6, the expression "Expiry Date" means [•]. Our liability hereunder shall be limited as follows:
 - (a) we shall have no liability in respect of any demand received after the Expiry Date; and
 - (b) in respect of a demand or demands received on or before the Expiry Date, our liability shall not exceed the aggregate sum of £[•].
7. Our obligations hereunder shall remain in full force and effect and shall not in any way be affected, reduced or discharged by:
 - (c) any alteration to the terms of the Contract made by agreement between you and the Supplier; and/or
 - (d) any defence, counterclaim, set-off or other deduction available to the Supplier under the Contract; and/or

- (e) any alteration in the extent or nature or sequence or method or timing of the works/services to be carried out under the Contract; and/or
 - (f) any time being given to the Supplier or any other indulgence or concession to the Supplier or any forbearance, forgiveness or any other thing done, omitted or neglected to be done under the Contract; and/or
 - (g) any other bond, security or guarantee now or hereafter held by you for all or any part of the obligations of the Supplier under the Contract; and/or
 - (h) the release or waiver of any such other bond, security or guarantee; and/or
 - (i) any amalgamation or reconstruction or dissolution including liquidation or change in control or constitution of the Supplier; and/or
 - (j) the termination of the Contract; and/or
 - (k) any other event which might operate to discharge a guarantor at law or in equity.
8. Terms defined in the Contract and not otherwise defined herein shall have the same meaning in this Bond unless inconsistent with the context.
 9. This Bond shall be governed by, and interpreted according to, the laws of England and the Courts of England shall have exclusive jurisdiction in relation to any claim, dispute or difference concerning this Bond and any matter arising from it save that you shall have the right to bring proceedings in the Courts of any other jurisdiction in which any of our assets may be situated.
 10. This Bond may be assigned or transferred without our prior consent to any member of the Transport for London Group. Any other assignment or transfer of this Bond by either party shall require the consent of the other party, such consent not to be unreasonably withheld or delayed.
 11. This Bond may not be amended, varied or supplemented in any manner whatsoever without your prior written consent, other than in accordance with its express terms.
 12. Each of the provisions of this Bond is severable and distinct from the others, and if at any time any such provision is or becomes ineffective, inoperable, invalid or unenforceable it shall be severed and deemed to be deleted from this Bond, and in such event the remaining provisions of this Bond shall continue to have full force and effect.
 13. All bank charges and other fees payable in relation to or in connection with this Bond are for the account of the Service Provider and you shall have no liability or responsibility therefor.
 14. Except to the extent it is inconsistent with the express terms of this Bond, this Bond is subject to the ICC Uniform Rules for Demand Guarantees, 2010 revision, ICC Publication No. 758.

Executed as a deed by the parties and delivered on the date of this Bond.

Executed as a Deed by [GUARANTOR])
 acting by)

and

) Authorised Signatory

)

) Authorised Signatory

Executed as a deed by affixing the Common Seal of

TRANSPORT FOR LONDON

)

in the presence of:-

)

.....

[Authorised Signatory]

ANNEX 1A

Form of Demand from the Company to the Guarantor

To be sent by first class recorded delivery post

Dear Sirs

[Contract Title]

Contract No: [•]

We refer to the Bond given by you to us dated [•]. We enclose a copy of a letter from us to [•] ("the **Supplier**") which was sent to the Supplier by first class recorded post on [•] which is more than fourteen (14) days before the date of this demand.

The Supplier has not taken steps to remedy the breach/breaches of the Contract.

The breach/breaches of the Contract is/are as follows:

[•]We hereby demand payment from you of the sum of £[•] under your Bond. Please make payment by CHAPS in sterling payable to [Transport for London / bank account details].

Yours faithfully

.....

Transport for London

Windsor House

42-50 Victoria Street

London

SW1H 0TL

ANNEX 1B

Form of letter from the Company to the Supplier

To be sent by first class recorded delivery post

Dear Sirs

[Contract Title]

Contract No: [•] (the "Contract")

As explained in [previous letters to you/ our letter dated [•]], you are in breach of your obligations under the Contract and you have not proposed or implemented sufficient steps to remedy those breaches.

This letter therefore notifies you that, unless within the next fourteen (14) days you take steps to remedy the breach/breaches, we will be entitled without further notice to you to call for payment under the Bond given on your behalf by [• Guarantor].

Yours faithfully

.....

on behalf of

Transport for London

Windsor House

42-50 Victoria Street

London

SW1H 0TL

ANNEX 2

Alternative form of demand from the Company to the Guarantor

Dear Sirs

[Contract Title]

Contract No: [•] (the "Contract")

We refer to the Bond given by you to us dated [•].

An event has occurred of the type described in Clause [•] of the Contract.

The breach/breaches of the Contract is/are as follows:

[•]

We hereby demand payment from you of the sum of £[•] under the Bond. Please make payment by CHAPS made payable to [Transport for London / bank account details].

Yours faithfully

.....

Transport for London

Windsor House

42-50 Victoria Street

London

SW1H 0TL

Escrow Agreement Dated:**Between:**

- (1) **EKE-ELECTRONICS LTD** (Registered Number: 01007204) a company incorporated under the laws of Finland whose registered office is at Piispanportti 7, 02240 Espoo, Finland ("**Owner**");
- (2) **LONDON UNDERGROUND LIMITED**, (Registered Number: 1900907) a company incorporated under the laws of England and Wales whose registered office is at Windsor House, 42-50 Victoria Street, London SW1H 0TL ("**Licensee**"); and
- (3) **NCC GROUP ESCROW LIMITED** a company registered in England whose registered office is at Manchester Technology Centre, Oxford Road, Manchester M1 7EF, ENGLAND (CRN: 3081952) ("**NCC Group**").

Background:

- (A) The Licensee has been granted a right to use the Software which comprises computer programs.
- (B) Certain technical information and/or documentation relating to the Software is the confidential information and intellectual property of the Owner or a third party.
- (C) The Owner acknowledges that in certain circumstances, such information and/or documentation would be required by the Licensee in order for it to continue to exercise its rights under the Licence Agreement.
- (D) The parties therefore agree that such information and/or documentation should be placed with a trusted third party, NCC Group, so that such information and/or documentation can be released to the Licensee should certain circumstances arise.

Agreement:

In consideration of the mutual undertakings and obligations contained in this Agreement, the parties agree that:

1 **Definitions and Interpretation**

1.1 In this Agreement the following terms shall have the following meanings:

"Agreement" means the terms and conditions of this escrow agreement set out below, including the schedules hereto.

"Confidential Information" means all technical and/or commercial information not in the public domain and which is designated in writing as confidential by any party together with all other information of any party which may reasonably be regarded as confidential information.

"Escrow Materials" means the Software and Source Code and any other such materials notified in writing by the Purchaser to the Service Provider that are required by the Purchaser to perform or procure the performance of the Service Provider's obligations under the Support and Spares Supply Agreement.

"Full Verification" means the tests and processes forming NCC Group's Full Verification service and/or such other tests and processes as may be agreed between the parties for the verification of the Escrow Materials.

"Independent Expert" means a suitably qualified and independent solicitor or barrister.

"Integrity Testing" means those tests and processes forming NCC Group's Integrity Testing service, in so far as they can be applied to the Escrow Materials.

"Intellectual Property Rights" mean any copyright, patents, design patents, registered designs, design rights, utility models, trademarks, service marks, trade secrets, know how, database rights, moral rights, confidential information, trade or business names, domain names, and any other rights of a similar nature including industrial and proprietary rights and other similar protected rights in any country or jurisdiction together with all registrations, applications to register and rights to apply for registration of any of the aforementioned rights and any licences of or in respect of such rights.

"Licence" means the licence granted to the Licensee to use the Software.

"Licence Agreement" means the agreement listed in Schedule 3 under which the Licensee was granted the Licence.

"Order Form" means the order form setting out the details of the order placed with NCC Group for setting up this Agreement.

"Release Purposes" means the purposes of understanding, maintaining, modifying and correcting the Software exclusively for and on behalf of the Licensee together with such other purposes (if any) as are permitted under the Licence Agreement.

"Release Events" has the meaning given to it in clause 6.1 of this Agreement.

"Software" means the software package together with any updates and upgrades thereto and new versions thereof licensed to the Licensee under the Licence Agreement.

"Source Code" means the computer programming code of the Software in human readable form and such other material and documentation (including updates and upgrades thereto and new versions thereof) as are necessary to be delivered or deposited to comply with clause 2 of this Agreement.

"Third Party Material" means Source Code which is not the confidential information and intellectual property of the Owner or the Licensee.

1.2 This Agreement shall be interpreted in accordance with the following:

- 1.2.1 headings are for ease of reference only and shall not be taken into consideration in the interpretation of this Agreement;
- 1.2.2 all references to clauses and schedules are references to clauses and schedules of this Agreement; and
- 1.2.3 all references to a party or parties are references to a party or parties to this Agreement.

2 Owner's Duties and Warranties

2.1 The Owner shall:

- 2.1.1 deliver a copy of the Escrow Materials each time there is a change to such item of Escrow Materials;
- 2.1.2 ensure that each item of the Escrow Materials deposited with the NCC Group comprises the latest version of such item of information or documentation used by the Licensee and, where such item comprises the Source Code, ensure that each copy of the Source Code comprises the Source Code of the latest version of the Software used by the Licensee;
- 2.1.3 deliver to NCC Group a replacement copy of the relevant Escrow Materials within 30 days after the anniversary of the last delivery of the relevant Escrow Materials to ensure that the integrity of the Escrow Materials media is maintained;
- 2.1.4 deliver a replacement copy of the Escrow Materials to NCC Group within fourteen (14) days of a notice given to it by NCC Group under the provisions of clause 4.1.3;
- 2.1.5 deliver with each deposit of the Escrow Materials the following information:
 - 2.1.5.1 details of the deposit including, where applicable, the full name of the relevant Escrow Material (i.e. the original name as set out under Schedule 1 together with any new names given to the Escrow Materials by the Owner), version details, media type, backup command/software used, compression used, archive hardware and operating system details; and
 - 2.1.5.2 password/encryption details required to access the Escrow Materials;
 - 2.1.5.3 any other information or documentation required to be disclosed under any Licence Agreement or to facilitate the use of any of the Escrow Materials.
- 2.1.6 deliver with each deposit of the Source Code the following technical information (where applicable):
 - 2.1.6.1 documentation describing the procedures for building, compiling and installing the software, including names and versions of the development tools;
 - 2.1.6.2 software design information (e.g. module names and functionality); and
 - 2.1.6.3 name and contact details of employees with knowledge of how to maintain and support the Source Code; and
 - 2.1.6.4 if required by the Licensee, deposit a backup copy of the object code of any third party software package and any other information or documentation required to access, install, build or compile or otherwise use the Source Code.

2.2 The Owner warrants to both NCC Group and the Licensee at the time of each deposit of the Escrow Materials with NCC Group that:

- 2.2.1 other than any third party object code referred to in clause 2.1.6, any Third Party Material or any Escrow Materials owned by the Licensee by virtue of the provisions of the Licence Agreement, it owns the Intellectual Property Rights in the Escrow Materials;
- 2.2.2 in respect of any Third Party Material, it has been granted valid and ongoing rights under licence by the third party owner(s) thereof to deal with such Third Party Material in the manner anticipated under this Agreement and that the Owner has the express authority of such third party owner(s) to deposit the Third Party Material under this Agreement as evidenced by a signed letter of authorisation in the form required by NCC Group;
- 2.2.3 in entering into this Agreement and performing its obligations under it, it is not in breach of any of its ongoing express or implied obligations to any third party(s);
- 2.2.4 the Source Code deposited under clause 2.1 contains all information in human-readable form (except for any third party object code deposited pursuant to clause 2.1.6) and is on suitable media to enable a reasonably skilled programmer or analyst to understand, maintain, modify and correct the Software; and
- 2.2.5 in respect of any third party object code that the Owner, at its option, or, at the request of the Licensee, deposits with NCC Group in conjunction with the Source Code pursuant to clause 2.1.6, it has the full right and authority to do so.

3 Licensee's Responsibilities and Undertakings

- 3.1 The Licensee shall notify NCC Group of any change to the Escrow Materials that necessitates a replacement deposit of the Escrow Materials.
- 3.2 In the event that the Escrow Materials are released under clause 6, the Licensee shall, subject to the terms of the Licence Agreement:
 - 3.2.1 keep the Escrow Materials confidential at all times and ensure that any other person to whom the Escrow Materials is disclosed pursuant to clause 3.2.3 does the same;
 - 3.2.2 use the Escrow Materials only for the Release Purposes;
 - 3.2.3 not disclose the Escrow Materials to any person save as permitted under the terms of any relevant Licence Agreement or as otherwise required for the Release Purposes;
 - 3.2.4 hold all media containing the Escrow Materials in a safe and secure environment when not in use; and
 - 3.2.5 forthwith destroy the Escrow Materials should the Licensee cease to be entitled to use the Escrow Materials under the terms of the Licence Agreement.
- 3.3 In the event that the Escrow Materials are released under clause 6, it shall be the responsibility of the Licensee to obtain the necessary licences to utilise the object code of any third party material deposited by the Owner pursuant to clause 2.1.6.

4 NCC Group's Duties

4.1 NCC Group shall:

- 4.1.1 at all times during the term of this Agreement, retain the latest deposit of the Escrow Materials in a safe and secure environment;
- 4.1.2 inform the Owner and the Licensee of the receipt of any deposit of the Escrow Materials by sending to both parties a copy of the Integrity Testing report or Full Verification report (as the case may be) generated from the testing processes carried out under clause 10; and
- 4.1.3 notify the Owner and the Licensee if it becomes aware at any time during the term of this Agreement that the copy of the Escrow Materials held by it has been lost, damaged or destroyed so that a replacement may be obtained.

4.2 In the event of failure by the Owner to deposit any Escrow Materials with NCC Group, NCC Group shall not be responsible for procuring such deposit and may, at its sole discretion, notify the Licensee of the Owner's failure to deposit any Escrow Materials.

4.3 NCC Group may appoint agents, contractors or sub-contractors as it deems fit to carry out the Integrity Testing and the Full Verification processes. NCC Group shall ensure that any such agents, contractors and sub-contractors are bound by the same confidentiality obligations as are contained in clause 8.

4.4 NCC Group has the right to make such copies of the Escrow Materials as may be necessary solely for the purposes of this Agreement.

5 Payment

5.1 The Parties shall pay NCC Group's standard fees and charges as published from time to time or as otherwise agreed, in the proportions set out in Schedule 2. NCC Group's fees as published are exclusive of value added tax.

5.2 NCC Group shall be entitled to review and vary its standard fees and charges for its services under this Agreement from time to time but no more than once a year and only upon 45 days written notice to the Parties.

5.3 All invoices are payable within thirty (30) days from the date of invoice. NCC Group reserves the right to charge interest in respect of the late payment of any sum due under this Agreement (both before and after judgement) at the rate of two per cent (2%) per annum over the prevailing base rate of HSBC Bank Plc accruing on a daily basis from the due date therefor until full payment.

6 Release Events

6.1 Subject to: (i) the remaining provisions of this clause 6 and (ii) the receipt by NCC Group of its release fee and any other fees and interest (if any) outstanding under this Agreement, NCC Group will release the Escrow Materials to a duly authorised officer of the Licensee if any of the following events ("**Release Event(s)**") occur:

- 6.1.1 if the Owner is a company:

- 6.1.1.1 an order is made for the winding up of the Owner, the Owner passes a resolution for winding up (other than for the purposes of a solvent reconstruction or amalgamation) or a liquidator of the Owner is appointed; or
- 6.1.1.2 an order is made for the appointment of an administrator of the Owner or an administrator of the Owner is appointed; or
- 6.1.1.3 the Owner enters into a compromise or arrangement with creditors; or
- 6.1.1.4 the Owner has a receiver, administrative receiver or manager appointed over all or any part of its assets or undertaking; or
- 6.1.1.5 the Owner is dissolved; or
- 6.1.2 if the Owner is an individual:
 - 6.1.2.1 the Owner enters into a compromise or arrangement with creditors; or
 - 6.1.2.2 the Owner is declared bankrupt; or
 - 6.1.2.3 the Owner dies; or
- 6.1.3 if the Owner is a partnership:
 - 6.1.3.1 any of the partners in the Owner are declared bankrupt or enter into a compromise or arrangement with creditors; or
 - 6.1.3.2 the Owner is wound up or dissolved; or
 - 6.1.3.3 the Owner enters into a compromise or arrangement with creditors; or
 - 6.1.3.4 a partnership administration order is made in respect of the Owner; or
- 6.1.4 any similar or analogous proceedings or event to those in clauses 6.1.1 to 6.1.3 above occurs in respect of the Owner within any jurisdiction outside England; or
- 6.1.5 the Owner ceases to carry on its business or the part of its business which relates to the Escrow Materials; or
- 6.1.6 the Owner assigns its rights to the Intellectual Property Rights in the Escrow Materials to a third party (“Assignee”) and the Assignee fails, within sixty (60) days of all parties’ knowledge of such assignment, to continue escrow protection for the benefit of the Licensee by failing to enter into either:
 - 6.1.6.1 a novation agreement with the Licensee and NCC Group for the assumption of the Owner’s rights and obligations under this Agreement by the Assignee; or
 - 6.1.6.2 a new escrow agreement with the Licensee for the Escrow Materials which offers the Licensee substantially similar protection to that provided by this Agreement without significantly increasing the overall cost to the Licensee,

provided that if the Assignee offers to enter into a novation or new escrow agreement within sixty (60) days of all parties' knowledge of the assignment and the Licensee fails to accept the Assignee's offer within thirty (30) days of such offer being notified to the Licensee, there shall be no Release Event under this clause; or

- 6.1.7 the Owner or, where relevant, its agent, parent, subsidiary or associated company is in material breach of its obligations under the relevant Licence Agreement or any maintenance agreement entered into in connection with the Escrow Materials and has failed to remedy such default as required by the terms of the Licence Agreement or such maintenance agreement.
- 6.2 The Licensee must notify NCC Group of the Release Event specified in clause 6.1 by delivering to NCC Group a statutory or notarised declaration ("**Declaration**") made by an officer of the Licensee declaring that such Release Event has occurred, setting out the facts and circumstances of the Release Event, that the Licence Agreement and any maintenance agreement, if relevant, for the Escrow Materials was still valid and effective up to the occurrence of such Release Event and exhibiting such documentary evidence in support of the Declaration as NCC Group shall reasonably require.
- 6.3 Upon receipt of a Declaration from the Licensee claiming that a Release Event has occurred:
- 6.3.1 NCC Group shall submit a copy of the Declaration to the Owner by courier or other form of guaranteed delivery; and
- 6.3.2 unless within fourteen (14) days after the date of despatch of the Declaration by NCC Group, NCC Group receives a counter-notice signed by a duly authorised officer of the Owner stating that in their view no such Release Event has occurred or, if appropriate, that the event or circumstance giving rise to the Release Event has been rectified as shown by documentation in support thereof,
- NCC Group will release the Escrow Materials to the Licensee for its use for the Release Purposes.
- 6.4 Upon receipt of the counter-notice from the Owner under clause 6.3.2, NCC Group shall send a copy of the counter-notice and any supporting evidence to the Licensee by courier or other form of guaranteed delivery.
- 6.5 Upon receipt by the Licensee of the counter-notice from NCC Group or, in any event, within ninety (90) days of despatch of the counter-notice by NCC Group, the Licensee may give notice to NCC Group that they wish to invoke the dispute resolution procedure under clause 7.
- 6.6 If, within ninety (90) days of despatch of the counter-notice by NCC Group to the Licensee, NCC Group has not been informed by the Licensee that they wish the dispute resolution procedure under clause 7 to apply, the Declaration submitted by the Licensee will be deemed to be no longer valid and the Licensee shall be deemed to have waived their right to release of the Escrow Materials for the particular reason or event specified in the original Declaration.
- 6.7 For the avoidance of doubt, where a Release Event has occurred under clauses 6.1.1 to 6.1.5, a subsequent assignment of the Intellectual Property Rights in the Escrow Materials shall not

prejudice the Licensee's right to release of the Escrow Materials and its use for the Release Purposes.

7 Disputes

- 7.1 NCC Group shall notify the Owner of the Licensee's request for dispute resolution. Unless the Owner or the Licensee objects, NCC Group's Chief Executive Officer for the time being will appoint an Independent Expert to resolve the dispute. If the Owner or the Licensee objects to this appointment, they shall endeavour to appoint a mutually acceptable Independent Expert within seven (7) days of registering their objection. If they fail to appoint an Independent Expert within this seven (7) day period, NCC Group shall request that the President of The Law Society appoints an Independent Expert to resolve the dispute. Any appointment of an Independent Expert under this clause shall be binding upon the parties.
- 7.2 Within five (5) working days of the appointment of the Independent Expert, the Owner and the Licensee shall each provide full written submissions to the Independent Expert together with all relevant documentary evidence in their possession in support of their claim.
- 7.3 The Independent Expert shall be requested to give a decision on the matter within fourteen (14) days of the date of referral or as soon as practicable thereafter and to send a copy of that decision to the Owner, Licensee and NCC Group. The Independent Expert's decision shall be final and binding on all parties and shall not be subject to appeal to a court in legal proceedings except in the case of manifest error.
- 7.4 If the Independent Expert's decision is in favour of the Licensee, NCC Group is hereby authorised to release and deliver the Escrow Materials to the Licensee within five (5) working days of the decision being notified by the Independent Expert to the parties.
- 7.5 The Parties hereby agree that the costs and expenses of the Independent Expert shall be borne by the party against whom the decision of the Independent Expert is given.

8 Confidentiality

- 8.1 The Escrow Materials shall remain at all times the confidential and intellectual property of its owner.
- 8.2 Subject to the terms of the Licence Agreement, in the event that NCC Group releases the Escrow Materials to the Licensee, the Licensee shall be permitted to use the Escrow Materials only for the Release Purposes.
- 8.3 NCC Group agrees to keep all Confidential Information relating to the Escrow Materials that comes into its possession or to its knowledge under this Agreement in strictest confidence and secrecy. NCC Group further agrees not to make use of such information and/or documentation other than for the purposes of this Agreement and, unless the parties should agree otherwise in writing, will not disclose or release it other than in accordance with the terms of this Agreement.

9 Intellectual Property Rights

- 9.1 The release of the Escrow Materials to the Licensee will not act as an assignment of any Intellectual Property Rights that the Owner or any third party possesses in the Escrow Materials.

9.2 The Intellectual Property Rights in the Integrity Testing report and any Full Verification report shall remain vested in NCC Group. The Owner and the Licensee shall each be granted a non-exclusive right and licence to use such report for the purposes of this Agreement and their own internal purposes only.

10 Integrity Testing and Full Verification

10.1 NCC Group shall bear no obligation or responsibility to any party to this Agreement or person, firm, company or entity whatsoever to determine the existence, relevance, completeness, accuracy, operation, effectiveness, functionality or any other aspect of the Escrow Materials received by NCC Group under this Agreement.

10.2 As soon as practicable after the Escrow Materials has been deposited with NCC Group, NCC Group shall apply its Integrity Testing processes to the Material.

10.3 Any party to this Agreement shall be entitled to require NCC Group to carry out a Full Verification. Subject to clause 10.4, NCC Group's prevailing fees and charges for the Full Verification processes and all reasonable expenses incurred by NCC Group in carrying out the Full Verification processes shall be payable by the requesting party.

10.4 If the Escrow Materials fail to satisfy NCC Group's Full Verification tests as a result of being defective or incomplete in content, NCC Group's fees, charges and expenses in relation to the Full Verification tests shall be paid by the Owner.

10.5 Should the Escrow Materials deposited fail to satisfy NCC Group's Integrity Testing or Full Verification tests under clauses 10.2 or 10.3, the Owner shall, within fourteen (14) days of the receipt of the notice of test failure from NCC Group, deposit such new, corrected or revised Escrow Materials as shall be necessary to ensure its compliance with its warranties and obligations in clause 2. If the Owner fails to make such deposit of the new, corrected or revised Escrow Materials, NCC Group will issue a report to the Licensee detailing the problem with the Escrow Materials as revealed by the relevant tests.

11 NCC Group's Liability

11.1 Nothing in this clause 11 excludes or limits the liability of NCC Group for:-

11.1.1 fraud or fraudulent misrepresentation;

11.1.2 death or personal injury caused by NCC Group's (or its employees', agents' or sub-contractors') negligence; or

11.1.3 any matter for which it is not permitted by law to exclude or limit, or to attempt to exclude or limit, its liability.

Without prejudice to clauses 11.1.1 to 11.1.3 (inclusive), the following provisions set out the entire financial liability of NCC Group (including any liability for the acts or omissions of its employees, agents and subcontractors) arising out of or in connection with this Agreement, whether in contract, tort, misrepresentation, under statute or otherwise, howsoever caused including (without limitation) by negligence and also including (without limitation) any liability arising from a breach of, or a failure to perform or defect or delay in performance of, any of NCC Group's obligations under this Agreement.

11.2 NCC Group shall not be liable for any loss or damage caused to the other Parties except to the extent that such loss or damage is caused by the negligent acts or negligent omissions of or a breach of any contractual duty by NCC Group, its employees, agents or sub-contractors in performing its obligations under this Agreement and in such event NCC Group's maximum aggregate liability arising out of or in connection with this Agreement, whether in contract, tort, misrepresentation, under statute or otherwise, howsoever caused including (without limitation) by negligence and also including (without limitation) any liability arising from a breach of, or a failure to perform or defect or delay in performance of, any of NCC Group's obligations under this Agreement, shall be limited to £2,500,000 (two million five hundred thousand pounds).

11.3 Subject to clause 11.1 NCC Group shall not be liable to the other Parties for any;

11.3.1 indirect, consequential and/or special loss or damage;

11.3.2 loss of profit (direct or indirect);

11.3.3 loss of revenue, loss of production or loss of business (in each case whether direct or indirect);

11.3.4 loss of goodwill, loss of reputation, or loss of opportunity (in each case whether direct or indirect);

11.3.5 loss of anticipated saving or loss of margin (in each case whether direct or indirect); and/or

11.3.6 loss or damage arising out of any failure by the Owner to keep full and up to date back-ups and security copies of any Escrow Materials delivered under this Agreement,

arising out of or in connection with this Agreement, whether in contract, tort, misrepresentation, under statute or otherwise, howsoever caused including (without limitation) by negligence and also including (without limitation) any liability arising from a breach of, or a failure to perform or defect or delay in performance of, any of NCC Group's obligations under this Agreement.

11.4 NCC Group shall not be liable in any way to the Owner 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, statutory declaration or any other document furnished to it pursuant to and in accordance with this Agreement.

11.5 NCC Group shall not be required to make any investigation into and shall be entitled in good faith without incurring any liability to the Owner 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, statutory declarations or notices received by it in respect of this Agreement.

12 Indemnity

12.1 Save for any claim falling within the provisions of clause 11.1.1, the Owner and the Licensee jointly and severally agree at all times to indemnify and hold harmless NCC Group in respect of all of its legal and all other costs, fees and expenses incurred directly or indirectly as a result of being brought into or otherwise becoming involved in any form of dispute

resolution proceedings or any litigation of any kind between the Owner and the Licensee in relation to this Agreement to the extent that this Agreement does not otherwise provide for reimbursement of such costs.

- 12.2 The Owner shall assume all liability and shall at all times indemnify and hold harmless NCC Group and its officers, agents, sub-contractors and employees from and against any and all liability, loss, damages, costs, legal costs, professional and other expenses and any other liabilities of whatever nature, awarded against or agreed to be paid or otherwise suffered, incurred or sustained by NCC Group, whether direct, indirect or consequential as a result of or in connection with any claim by any third party(s) for alleged or actual infringement of Intellectual Property Rights arising out of or in connection with all and any acts or omissions of NCC Group in respect of the Escrow Materials as contemplated under this Agreement.

13 **Term and Termination**

- 13.1 This Agreement shall continue until terminated in accordance with this clause 13.
- 13.2 If the Owner or the Licensee, as the case may be, fails to pay an invoice addressed to it for services under this Agreement within thirty (30) days of its issue, NCC Group reserves the right to give that party written notice to pay the outstanding invoice within thirty (30) days. If the Licensee has not paid its invoice by the expiry of the thirty (30) day notice period, this Agreement will automatically immediately terminate. If the Owner has not paid its invoice by the expiry of the thirty (30) day notice period, NCC Group will give the Licensee a period of fifteen (15) days to pay the Owner's invoice. If the Owner's invoice has not been paid by the expiry of the fifteen (15) day optional payment period given to the Licensee, this Agreement will automatically immediately terminate. Any amounts owed by the Owner but paid by the Licensee will be recoverable by the Licensee direct from the Owner as a debt and, if requested, NCC Group shall provide appropriate documentation to assist in such recovery.
- 13.3 Upon termination under the provisions of clause 13.2, for thirty (30) days from the date of termination NCC Group will make the Escrow Materials available for collection by the Owner or its agents from the premises of NCC Group during office hours. After such thirty (30) day period NCC Group will destroy the Escrow Materials.
- 13.4 Notwithstanding any other provision of this clause 13, NCC Group may terminate this Agreement by giving thirty (30) days written notice to the Owner and the Licensee. In that event, the Owner and the Licensee shall appoint a mutually acceptable new custodian on similar terms and conditions to those contained herein. If a new custodian is not appointed within fourteen (14) days of delivery of such notice, the Owner or the Licensee shall be entitled to request the President for the time being of the British Computer Society (or successor body) to appoint a suitable new custodian upon such terms and conditions as he/she shall require. Such appointment shall be final and binding on the Owner and the Licensee. If NCC Group is notified of the new custodian within the notice period, NCC Group will forthwith deliver the Escrow Materials to the new custodian. If NCC Group is not notified of the new custodian within the notice period, NCC Group will return the Escrow Materials to the Owner.
- 13.5 The Licensee may terminate this Agreement at any time by giving written notice to NCC Group. Upon such termination, NCC Group will return the Escrow Materials to the Owner.

- 13.6 If NCC Group discovers that a Release Event has occurred and the Licensee has failed to exercise its right to claim for release of the Escrow Materials under clause 6.2, NCC Group shall have the right to terminate this Agreement upon thirty (30) days written notice to the Owner and the Licensee. The Licensee shall have the option of applying for release in accordance with clause 6 during this notice period, but if it fails to do so, upon the expiry of this notice period, this Agreement shall automatically terminate and, unless otherwise instructed by the Owner or the Assignee prior to expiry of the notice period, NCC Group shall destroy the Escrow Materials.
- 13.7 If the Intellectual Property Rights in the Escrow Materials have been assigned to a third party and the proviso in clause 6.1.6 applies such that there has been no Release Event under that clause, NCC Group shall be entitled to terminate this Agreement immediately by written notice to the Owner and the Licensee and upon such termination, unless otherwise instructed by the Owner or the Assignee, NCC Group shall destroy the Escrow Materials.
- 13.8 If the Licence has expired or has been lawfully terminated, then the Licensee shall give notice to NCC Group within fourteen (14) days thereof to terminate this Agreement, failing which, the Owner shall be entitled to give written notice to NCC Group to terminate this Agreement. Upon receipt of such a notice from the Owner, NCC Group shall notify the Licensee of the Owner's notice to terminate. Unless within fourteen (14) days of NCC Group giving such notice to the Licensee, NCC Group receives a counter-notice signed by a duly authorised officer of the Licensee disputing the termination of the Licence Agreement, then the Licensee shall be deemed to have consented to such termination and this Agreement shall immediately automatically terminate. Any disputes arising under this clause shall be dealt with in accordance with the dispute resolution procedure in clause 7. Upon termination under this clause, NCC Group shall return the Escrow Materials to the Owner.
- 13.9 to clause 13.8, the Owner may only terminate this Agreement with the written consent of the Licensee.
- 13.10 This Agreement shall automatically immediately terminate upon release of the Escrow Materials to the Licensee in accordance with clause 6.
- 13.11 If the Agreement is superseded and replaced by a new agreement in respect of the Escrow Materials, this Agreement shall, upon the coming into force of the new agreement, automatically terminate. The relevant party or parties shall request NCC Group to either transfer the Escrow Materials to the new agreement or ask the owner under the new agreement to deposit new material. If new material is deposited, upon its receipt, NCC Group shall, unless otherwise instructed, destroy the Escrow Materials.
- 13.12 The provisions of clauses 1, 3.2, 3.3, 5, 8, 9, 10.1, 11, 12, 13.12 to 13.14 (inclusive) and 14 shall continue in full force after termination of this Agreement.
- 13.13 On and after termination of this Agreement, the Owner and/or the Licensee (as appropriate) shall remain liable to NCC Group 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.
- 13.14 The termination of this Agreement, however arising, shall be without prejudice to the rights accrued to the parties prior to termination.

14 General

- 14.1 A Party shall notify the other parties to this Agreement, within thirty (30) days of its occurrence, of any of the following:
- 14.1.1 a change of its name, registered office, contact address or other contact details; and
 - 14.1.2 any material change in its circumstances that may affect the validity or operation of this Agreement.
- 14.2 Within fourteen (14) days of any assignment or transfer by the Owner of any part of its Intellectual Property Rights in the Escrow Materials, the Owner shall notify:
- 14.2.1 NCC Group and the Licensee of such assignment and the identity of the Assignee; and
 - 14.2.2 the Assignee of the provisions of clause 6.1.6.
- 14.3 The formation, existence, construction, performance, validity and all other aspects of this Agreement shall be governed by and construed in accordance with the laws of England and the parties submit to the exclusive jurisdiction of the English courts.
- 14.4 This Agreement, together with the Order Form and any relevant NCC Group standard terms and conditions represent the whole agreement relating to the escrow arrangements between NCC Group and the other parties for the Escrow Materials and shall supersede all prior agreements, discussions, arrangements, representations, negotiations and undertakings. In the event of any conflict between any of these documents, the terms of this Agreement shall prevail.
- 14.5 Unless the provisions of this Agreement otherwise provide, any notice or other communication required or permitted to be given or made in writing hereunder shall be validly given or made if delivered by hand or courier or if despatched by first class recorded delivery (airmail if overseas) addressed to the address specified for the parties in this Agreement (or such other address as may be notified to the parties from time to time) or if sent by facsimile message to such facsimile number as has been notified to the parties from time to time and shall be deemed to have been received:
- (i) if delivered by hand or courier, at the time of delivery;
 - (ii) if sent by first class recorded delivery (airmail if overseas), two (2) business days after posting (six (6) days if sent by airmail);
 - (iii) if sent by facsimile, at the time of completion of the transmission of the facsimile with facsimile machine confirmation of transmission to the correct facsimile number of all pages of the notice.
- 14.6 The Owner and the Licensee shall not assign, transfer or subcontract this Agreement or any rights or obligations thereunder without the prior written consent of the other parties.
- 14.7 NCC Group shall be entitled to transfer or assign this Agreement upon written notice to both the Owner and the Licensee.
- 14.8 This Agreement shall be binding upon and survive for the benefit of the successors in title and permitted assigns of the parties.

- 14.9 If any provision of this Agreement is declared too broad in any respect to permit enforcement to its full extent, the parties agree that such provision shall be enforced to the maximum extent permitted by law and that such provision shall be deemed to be varied accordingly. If any provision of this Agreement is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void or unenforceable, it shall, to the extent of such illegality, invalidity or unenforceability, be deemed severable and the remaining part of the provision and the rest of the provisions of this Agreement shall continue in full force and effect.
- 14.10 Save as expressly provided in this Agreement, no amendment or variation of this Agreement shall be effective unless in writing and signed by a duly authorised representative of each of the parties to it.
- 14.11 The Parties shall not be liable to each other or be deemed to be in breach of this Agreement by reason of any delay in performing, or failure to perform, any of their obligations under this Agreement if the delay or failure was for a reason beyond that party's reasonable control (including, without limitation, fire, flood, explosion, epidemic, riot, civil commotion, any strike, lockout or other industrial action, act of God, war or warlike hostilities or threat of war, terrorist activities, accidental or malicious damage, or any prohibition or restriction by any governments or other legal authority which affects this Agreement and which is not in force on the date of this Agreement). A Party claiming to be unable to perform its obligations under this Agreement (either on time or at all) in any of the circumstances set out above must notify the other parties of the nature and extent of the circumstances in question as soon as practicable. If such circumstances continue for more than six (6) months, any of the other parties shall be entitled to terminate this Agreement by giving one (1) months' notice in writing.
- 14.12 No waiver by any Party of any breach of any provisions of this Agreement shall be deemed to be a waiver of any subsequent or other breach and, subject to clause 6.6, no failure to exercise or delay in exercising any right or remedy under this Agreement shall constitute a waiver thereof.
- 14.13 This Agreement is not intended to create any right under the Contracts (Rights of Third Parties) Act 1999 which is enforceable by any person who is not a party to this Agreement and the rights of any third party under the said act are hereby expressly excluded.
- 14.14 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.

Signed for and on behalf of **EKE-ELECTRONICS LTD**

Name:
|.....

Position: | (Authorised Signatory)

Signed for and on behalf of **LONDON UNDERGROUND LIMITED**

Name: |
.....

Position: | (Authorised Signatory)

Signed for and on behalf of **NCC GROUP ESCROW LIMITED**

Name: |
.....

Position: | (Authorised Signatory)

Schedule 1**NOT USED****Schedule 2****NCC Group's Fees**

		OWNER	LICENSEE
1	Annual Fee (payable on completion of this Agreement and in advance of each anniversary thereafter)	100%	Nil
2	Scheduled Update Fee (2 nd and subsequent scheduled deposits in any one year, payable on completion of this Agreement and in advance of each anniversary thereafter)	100%	Nil
3	Unscheduled Update Fee (per unscheduled deposit)	100%	Nil
4	Release Fee (plus NCC Group's reasonable expenses)	100%	Nil

Additional fees will be payable to NCC Group by the Licensee (unless otherwise agreed between the parties) for the following where applicable:

- Storage Fee for deposits in excess of one (1) cubic foot;
- Any novation or replacement of this Agreement at the request of the Owner or the Licensee;
- Integrity Testing Fee for deposits consisting of more than five (5) media items.

Schedule 3**Licence Agreement**

Spares and Support Agreement between the Owner and the Licensee dated on or around 5 December 2016.