

SCHEDULE 10: DISPUTE RESOLUTION PROCEDURE

For the purposes of this Dispute Resolution Procedure the following terms have the meanings set out below:

"Adjudicator" means an independent person appointed to act as an adjudicator in accordance with paragraph 8 of this Schedule 10 (*Dispute Resolution Procedure*).

"Dispute" means any dispute, controversy or claim arising out of or in connection with this Agreement.

"Nominating Authority" means the President or Vice President or other duly authorised officer of the London Court of International Arbitration;

"Notice of Adjudication" means any notice given by a Party to the other party or parties to the Dispute requiring reference of a Dispute to the Adjudicator in accordance with paragraph 7. The Notice of Adjudication shall include:

- (i) the nature and a brief description of the Dispute;
- (ii) details of where and when the Dispute arose; and
- (iii) the nature of the redress which is sought.

"Referral Notice" means a notice referring a Dispute to the Adjudicator in accordance with paragraph 11; and

"Senior Representative" means a representative of a Party at senior executive level.

1. The Purchaser and the Manufacturer shall follow the procedure set out in this Schedule 10 (*Dispute Resolution Procedure*) for the management and resolution of Disputes.
2. Subject to paragraph 7, any Dispute may in the first instance be referred in writing from the referring Party to the Senior Representatives by notice in writing to the other Party. The written notice from the referring Party shall give brief written particulars of the Dispute, the relief sought and the basis for claiming the relief sought (including the provisions of this Agreement that are relevant to the Dispute). The written notice shall also identify the referring Party's Senior Representative.
3. Within fourteen (14) days of receipt of the notice pursuant to paragraph 2, the responding Party provides the referring Party with a brief written response. The response includes identification of the responding Party's Senior Representative.
4. The Senior Representatives shall meet and try to reach agreement to resolve the Dispute referred to them pursuant to paragraph 3.
5. If the Senior Representatives are unable to, or fail to, reach agreement to resolve the Dispute within fourteen (14) days after the date of the response under paragraph 3, court proceedings shall not be commenced unless and until the Dispute has first been referred to adjudication (and an Adjudicator's decision has been obtained) in accordance with the procedure in paragraphs 7 to 28 and notice has been given in accordance with paragraph 29.
6. Each Party bears its own costs in relation to any reference of a Dispute to the Senior Representatives. Discussions amongst the Senior Representatives and any documents prepared or exchanged in relation to the reference of the Dispute to the Senior Representatives (including, for the avoidance of doubt, the notice under paragraph 2 and

any response under paragraph 3) are without prejudice and the Parties shall not make use of or rely upon any without prejudice statements in any proceedings.

7. Notwithstanding the provisions of paragraphs 1, 2, 3, 4, 5 and 6, either Party may give notice at any time of its intention to refer a Dispute to adjudication under the procedure set out in paragraphs 7 to 29 by giving a Notice of Adjudication to the other parties to the Dispute.
8. Should either Party give a Notice of Adjudication then immediately thereafter the parties to the Dispute shall endeavour to agree upon a person whom they would consider suitable to act as the Adjudicator.

In the event of the parties to the Dispute failing to agree upon a suitable person who is able to act as the Adjudicator, the referring Party shall request the Nominating Authority to select a person to act as the Adjudicator.

The Nominating Authority communicates the selection of the Adjudicator to the Parties within four (4) days of receiving a request to do so.

9. Any person requested or selected to act as the Adjudicator in accordance with paragraph 8:
 - 9.1 shall be a natural person acting in his personal capacity; and
 - 9.2 shall not be an employee of any of the parties to the Dispute, and shall declare any interest, financial or otherwise, in any matter relating to the Dispute

10. The terms of remuneration of the Adjudicator shall be agreed by the parties to the Dispute and the Adjudicator with the object of securing the appointment of the Adjudicator within seven (7) days of the Notice of Adjudication. If any party to the Dispute (but not all parties to the Dispute) rejects the terms of the remuneration of the Adjudicator the same shall be settled (and binding upon the parties to the Dispute) by agreement between the Nominating Authority and the Adjudicator (provided that the level of the Adjudicator's remuneration does not exceed the level originally proposed to the parties to the Dispute by the Adjudicator). If all the parties to the Dispute reject the terms of remuneration proposed by an Adjudicator another person shall be selected as an Adjudicator in accordance with paragraph 8.

11. Where the Adjudicator has been selected in accordance with paragraph 8 the referring Party shall refer the Dispute in writing to the Adjudicator by the Referral Notice in accordance with paragraph 12 within seven (7) days of the date of the Notice of Adjudication or within two (2) days of the date of appointment of the Adjudicator, whichever is later. Upon receipt of the Referral Notice, the Adjudicator must inform every Party to the dispute of the date that it was received.

12. The Referral Notice shall:
 - 12.1 include the facts relied upon by the referring Party in support of its claim(s);
 - 12.2 include a statement of the contractual and/or other basis relied upon by the referring Party in support of its claim(s);
 - 12.3 include a calculation of the specific monetary amount (if any) that the referring Party is seeking to recover in relation to each and every claim that is the subject matter of the Dispute;

12.4 be accompanied by copies of, or relevant extracts from, this Agreement and such other documents on which the referring Party relies; and

12.5 include the addresses of all Parties to the Dispute.

The referring Party shall send copies of the Referral Notice and the documents referred to in this paragraph 12 to the other Party at the same time as he sends them to the Adjudicator.

13. If a matter disputed by the Manufacturer under or in connection with a Subcontract is also a matter disputed under or in connection with this Agreement, the Manufacturer may, with the consent of the Purchaser, refer the Subcontract dispute to the Adjudicator at the same time as the main Agreement referral. The Adjudicator shall then decide the disputes together and references to the parties for the purposes of the Dispute are interpreted as including the Subcontractor. The parties to the Dispute agree to consider and endeavour to agree in good faith any reasonable request by the Adjudicator for additional time to decide the main Agreement and Subcontract disputes.

14. The parties to the Dispute may jointly terminate the Adjudicator's appointment at any time. In such a case, or:

14.1 if the Adjudicator fails to give notice of his decision within the period referred to in paragraph 17 and the parties to the Dispute do not jointly extend time for his decision to be made in accordance with paragraph 17, or

14.2 if the period referred to in paragraph 17 is extended in accordance with paragraph 18 or by agreement by the parties to the Dispute and the Adjudicator fails to give notice of his decision within such extended period, and the parties to the Dispute do not jointly extend time for his decision to be made in accordance with paragraph 17, or

14.3 if at any time the Adjudicator declines to act or is unable to act as a result of his death, disability, resignation or otherwise,

a person shall be appointed to replace the Adjudicator in accordance with the provisions of paragraph 8. In the event of the parties to the Dispute failing to jointly appoint a person willing and suitable to act as replacement Adjudicator within three (3) days, any party to the Dispute may apply to the Nominating Authority to appoint a replacement Adjudicator. In any case where the Adjudicator is appointed as a replacement pursuant to this paragraph 14, the parties to the Dispute shall each send to the Adjudicator, as soon as reasonably practicable, copies of all documents supplied by them to the Adjudicator he replaces.

15. The Nominating Authority and its employees and agents shall not be liable to any Party for any act or omission unless the act or omission is in bad faith. The Parties also agree that any employee or agent of the Nominating Authority shall be similarly protected from liability.

16. The Party not making the referral may send to the Adjudicator within fourteen (14) days of the date of the referral, with a copy to the other Party, a written statement of the contentions on which it relies and any materials it wishes the Adjudicator to consider.

17. The Adjudicator shall reach his decision and give notice of the decision to the parties to the Dispute within twenty-eight (28) days of the date of receipt of the Referral Notice mentioned in paragraph 11, or such longer period as is agreed by the parties to the

Dispute after the Dispute has been referred to him. Notice of the Adjudicator's decision (stating that it is given under this Schedule 10 (*Dispute Resolution Procedure*)) shall be in writing and shall include a summary of the Adjudicator's findings and a statement of the reasons for his decision.

18. The Adjudicator may extend the period of twenty-eight (28) days referred to in paragraph 17 by up to fourteen (14) days, with the consent of the Party by whom the Dispute was referred.
19. The Adjudicator's decision shall be binding upon the parties to the Dispute and the Adjudicator unless and until the Dispute is finally determined by legal proceedings, by arbitration (if the parties otherwise agree to arbitration) or by agreement. The Adjudicator may on his own initiative or on the application of a Party correct his decision so as to remove a clerical or typographical error arising by accident or omission. Any correction of a decision must be made within five (5) days of the delivery of the decision to the parties to the dispute. As soon as possible after correcting a decision in accordance with this paragraph, the Adjudicator must deliver a copy of the corrected decision to each of the Parties to this Agreement. Any correction of a decision shall form part of the decision. The Adjudicator may in his decision allocate his remuneration and expenses between the Parties in accordance with paragraph 26. If the Adjudicator's decision changes any payment which is due under this Agreement, payment of the sum decided by the Adjudicator shall be due not later than seven (7) days from the date of the decision or the date on which such payment is due in accordance with the provisions of this Agreement, whichever is the later.
20. The Adjudicator:
 - 20.1 shall act impartially and as an expert (not as an arbitrator) in the conduct of the reference and in reaching his decision;
 - 20.2 shall consider any relevant information submitted to him by any of the parties to the Dispute and make available to them any information to be taken into account in reaching his decision provided in accordance with the procedure (if any) which the Adjudicator may decide;
 - 20.3 shall reach his decision in accordance with the law applicable to this Agreement;
 - 20.4 may take the initiative in ascertaining the facts and the law in relation to the Dispute;
 - 20.5 may with the consent of the parties to the Dispute seek legal or technical advice from consultants whose appointment by the Adjudicator (including terms of remuneration) is subject to the approval of the parties to the Dispute;
 - 20.6 shall, where a translation of any document is required, decide by whom it should be provided in the event that the parties to the Dispute do not agree.
21. The Adjudicator shall decide in his discretion on the procedure to be followed in the adjudication. In particular he may, but is not obliged to:
 - 21.1 convene meetings upon reasonable notice to the parties to the Dispute at which such parties and their representatives are entitled to be present;
 - 21.2 submit lists of questions to the parties to the Dispute to be answered in such meetings or in writing within such reasonable time as he requires;

- 21.3 require the parties to the Dispute to provide him with such information and other facilities as he reasonably requires for the determination of the Dispute;
- 21.4 otherwise take such action and adopt such procedures as do not conflict with any of the provisions of this Agreement and are reasonable and proper for the just, expeditious and economical determination of the Dispute; and
- 21.5 inspect any part of the LUL Network, the Manufacturer's Works or the facilities of any relevant Subcontractor.
22. The Adjudicator shall not be liable for anything done or omitted in the discharge or purported discharge of his functions as an adjudicator unless the act or omission is in bad faith. The Parties also agree that any employee or agent of the Adjudicator shall be similarly protected from liability.
23. All meetings are private and save as required by law the Adjudicator and the Parties shall keep confidential the Dispute, all information of whatever nature provided to him by or on behalf of any Party and his decision.
24. The Parties to a contract to which the Dispute relates shall continue to observe and perform all the obligations contained in such contract, notwithstanding any reference to the Adjudicator, and insofar as the same is consistent with any safety review procedures to which the parties to the Dispute are bound, give effect forthwith to the Adjudicator's decision in every respect unless and until as hereinafter provided the Dispute is finally determined by a court in any legal proceedings, by arbitration (if the parties otherwise agree to arbitration) or by agreement. Any party to the Dispute may apply to any appropriate court for enforcement of the Adjudicator's decision. Neither any form of enforcement of the Adjudicator's decision nor any form of challenge to the enforcement of the Adjudicator's decision nor any dispute arising out of or in connection with such enforcement or challenge are regarded and treated as a Dispute for the purposes of this Schedule 10 (*Dispute Resolution Procedure*).
25. After the giving of a Notice of Adjudication, the Parties may seek to agree how the Adjudicator allocates the costs and fees excluding his remuneration and expenses which are dealt with in paragraph 26 below of the adjudication as between the Parties. If such an agreement is reached between the Parties, they shall notify the Adjudicator, who shall allocate costs and fees in accordance with such agreement. The Parties agree to be bound by the Adjudicator's allocation of costs and fees and to pay such costs and fees in accordance with the Adjudicator's direction unless and until the direction of the Adjudicator is set aside or revised by a court pursuant to any legal proceedings.
26. Subject to any agreement of the Parties, the Adjudicator shall allocate payment of his remuneration and expenses as between the Parties. Unless the Parties otherwise agree, the Adjudicator awards the payment of his remuneration and expenses on the general principle that costs should follow the event, except where it appears to the Adjudicator that in the circumstances this is not appropriate in relation to the whole or part of his remuneration or expenses. The Parties agree to be bound by the Adjudicator's allocation of payment of his remuneration and expenses and pay such remuneration and expenses in accordance with the Adjudicator's direction unless and until the direction of the Adjudicator is set aside or revised by a court pursuant to any legal proceedings.
27. All notices, written submissions and any other written communications between the parties to the Dispute and the Adjudicator shall either be delivered by hand, sent by facsimile or sent by first class pre-paid post or recorded delivery (airmail if posted to or from a place outside the United Kingdom) and, in each case, copied simultaneously

(delivered or sent as aforesaid) to the other Parties. Copies by way of confirmation of all communications by facsimile between the parties to the Dispute and the Adjudicator shall also be sent by first class post (airmail if posted to or from a place outside the United Kingdom) not later than the next following Working Day the date of the original facsimile transmission.

28. All information of whatever nature provided to the Adjudicator by any party to the Dispute shall be copied to the other parties simultaneously.
29. If any party to a Dispute is dissatisfied with the Adjudicator's decision on that Dispute, that party may commence court proceedings for the final determination of the Dispute.

SCHEDULE 12: NOT USED

SCHEDULE 13: FORM OF ESCROW AGREEMENT

**Single Licensee
Escrow Agreement**

Date: []

Owner: []

Agreement Number: []

Notice: The parties to this Agreement are obliged to inform the Escrow Agent of any changes to the Escrow Materials or in their circumstances (including change of name, registered office, contact details or change of owner of the intellectual property in the Escrow Materials)

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 (the "**Manufacturer**");
- (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 (the "**Purchaser**"); and
- (3) **NCC ESCROW INTERNATIONAL LIMITED** (Registered No: 03081952) a company registered in England whose registered office is at Manchester Technology Centre, Oxford Road, Manchester M1 7EF, ENGLAND ("**The Escrow Agent**").

Background:

- (A) The Purchaser and the Manufacturer have agreed that the Manufacturer will manufacture and supply replacement data transmissions systems for the London Underground Central Line fleet, related spares and special tools (the "**Goods**") and provide related services to the Purchaser on and subject to the terms set out in the Manufacture and Supply Agreement.
- (B) The Escrow Materials are the confidential property of the Manufacturer and are required for the manufacture, operation, maintenance and modification of the Goods.

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, Source Code and any other such materials notified in writing by the Purchaser to the Manufacturer that are required by the Purchaser to enable the Purchaser to perform or procure the performance of the Manufacturer's obligations under the Manufacture and Supply Agreement including, but not limited to, design drawings, product specifications and quality control measures.

"Expiry Date" means the date falling thirty (30) years after the date that this Agreement is executed.

"Full Verification" means the tests and processes forming the Escrow Agent'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 the Escrow Agent'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 Purchaser to use the Software.

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

"Order Form" means the order form setting out the details of the order placed with the Escrow Agent 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 Purchaser 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 Purchaser 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 Manufacturer or the Purchaser.

- 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. Manufacturer's Duties and Warranties

- 2.1 The Manufacturer 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 Escrow Agent comprises the latest version of such item of information or documentation used by the Purchaser 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 Purchaser;

- 2.1.3 deliver to the Escrow Agent a replacement copy of the relevant Escrow Materials within thirty (30) days after the anniversary of the last delivery of the relevant Escrow Materials to ensure that the integrity of the Escrow Material media is maintained;
 - 2.1.4 deliver a replacement copy of the Escrow Materials to the Escrow Agent within fourteen (14) days of a notice given to it by the Escrow Agent 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 Manufacturer), 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
 - 2.1.7 if required by the Purchaser, 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 Manufacturer warrants to both the Escrow Agent and the Purchaser at the time of each deposit of the Escrow Materials with the Escrow Agent that:
- 2.2.1 other than any third party object code referred to in clause 2.1.7, any Third Party Material or any Escrow Materials owned by the Purchaser 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 Manufacturer 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 the Escrow Agent;
 - 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 2.1.7) 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 Manufacturer, at its option, or, at the request of the Purchaser, deposits with the Escrow Agent in conjunction with the Source Code pursuant to clause 2.1.7, it has the full right and authority to do so.

3. Purchaser's Responsibilities and Undertakings

- 3.1 The Purchaser shall notify the Escrow Agent 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 Purchaser 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 Purchaser 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 Purchaser to obtain the necessary licences to utilise the object code of any third party material deposited by the Manufacturer pursuant to clause 2.1.7.

4. The Escrow Agent's Duties

- 4.1 The Escrow Agent 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 Manufacturer and the Purchaser 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 Manufacturer and the Purchaser 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 Manufacturer to deposit any Escrow Materials with the Escrow Agent, the Escrow Agent shall not be responsible for procuring such deposit and may, at its sole discretion, notify the Purchaser of the Manufacturer's failure to deposit any Escrow Materials.