



# Multi Licensee Escrow Protection Certificate Software Escrow Agreement

Date

Owner [Ownername]

Agreement Number [Agreement#]

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

**Escrow Agreement Dated:****Between:**

- (1) [Ownername] whose registered office is at [Owneraddress] (CRN: [Ownercrn]) ("**Owner**"); and
- (2) NCC ESCROW INTERNATIONAL LIMITED a company registered in England whose registered office is at Manchester Technology Centre, Oxford Road, Manchester M1 7EF, ENGLAND (CRN: 3081952) ("**NCC Escrow**").

**Background:**

- (A) The Licensee has been granted a licence to use the Package which comprises computer programs.
- (B) Certain technical information and/or documentation relating to the software package 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 Escrow, 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 and appendix 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 Protection Certificate"** means the certificate issued by NCC Escrow to the Licensee confirming escrow cover pursuant to the terms and conditions of this Agreement.

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

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

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

**"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 Agreement"** means the agreement under which a Licensee was granted a licence to use the Package.

**"Licensee"** means any person, firm, company or other entity:

- 1.1.1 to whom a licence to use the Package has been granted;
- 1.1.2 whom the Owner has approved for registration under this Agreement; and
- 1.1.3 who has been issued with an Escrow Protection Certificate by NCC Escrow;

and references in this Agreement to the Licensee shall be to the relevant Licensee or Licensees given the context in which such reference is made.

**"Material"** means the Source Code of the Package 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.

**"Order Form"** means an order form setting out the details of the order placed with NCC Escrow for setting up this Agreement and/or the registration of a Licensee under this Agreement.

**"Package"** means the software package together with any updates and upgrades thereto and new versions thereof licensed to the Licensee under the Licence Agreement details of which are set out in schedule 1.

**"Release Purposes"** means the purposes of understanding, maintaining, modifying and correcting the

Package exclusively for and on behalf of the Licensee together with such other purposes (if any) as are permitted under the Licence Agreement.

**"Source Code"** means the computer programming code of the Package in human readable form.

**"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 Material to NCC Escrow within 30 days of the date of this Agreement;
  - 2.1.2 deliver a further copy of the Material to NCC Escrow each time that there is a change to the Package;
  - 2.1.3 ensure that each copy of the Material deposited with NCC Escrow comprises the Source Code of the latest version of the Package used by the Licensee;
  - 2.1.4 deliver to NCC Escrow a replacement copy of the Material within 30 days after the anniversary of the last delivery of the Material to ensure that the integrity of the Material media is maintained;
  - 2.1.5 deliver a replacement copy of the Material to NCC Escrow within 14 days of a notice given to it by NCC Escrow under the provisions of clause 4.1.3;
  - 2.1.6 deliver with each deposit of the Material the following information:
    - 2.1.6.1 details of the deposit including the full name of the Package (i.e. the original name as set out under schedule 1 together with any new names given to the Package by the Owner), version details, media type, backup command/software used, compression used, archive hardware and operating system details; and
    - 2.1.6.2 password/encryption details required to access the Material;
  - 2.1.7 deliver with each deposit of the Material the following technical information (where applicable):
    - 2.1.7.1 documentation describing the procedures for building, compiling and installing the software, including names and versions of the development tools;
    - 2.1.7.2 software design information (e.g. module names and functionality); and
    - 2.1.7.3 name and contact details of employees with knowledge of how to maintain and support the Material; and
  - 2.1.8 if required by a Licensee, deposit a backup copy of the object code of any third party software package required to access, install, build or compile or otherwise use the Material.
- 2.2 The Owner warrants to both NCC Escrow and the Licensee at the time of each deposit of the Material with NCC Escrow that:
- 2.2.1 other than any third party object code referred to in clause 2.1.8 or any Third Party Material, it owns the Intellectual Property Rights in the Material;
  - 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 Escrow;
  - 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 Material deposited under clause 2.1 contains all information in human-readable form (except for any third party object code deposited pursuant to clause 2.1.8) and is on suitable media to enable a reasonably skilled programmer or analyst to understand, maintain, modify and correct the Package; 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 Escrow in conjunction with the Material pursuant to clause 2.1.8, it has the full right and authority to do so.

### 3 Licensee's Responsibilities and Undertakings

- 3.1 The Licensee shall notify NCC Escrow of any change to the Package that necessitates a replacement deposit of the Material.
- 3.2 In the event that the Material is released under clause 6, the Licensee shall:
- 3.2.1 keep the Material confidential at all times;
  - 3.2.2 use the Material only for the Release Purposes;
  - 3.2.3 not disclose the Material to any person save such of the Licensee's employees or contractors who need to know the same for the Release Purposes. In the event that Material is disclosed to its employees or contractors, the Licensee shall ensure that they are bound by the same confidentiality obligations as are contained in this clause 3.2;
  - 3.2.4 hold all media containing the Material in a safe and secure environment when not in use; and
  - 3.2.5 forthwith destroy the Material should the Licensee cease to be entitled to use the Package under the terms of the Licence Agreement.
- 3.3 In the event that the Material is 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 2.1.8.

### 4 NCC Escrow's Duties

- 4.1 NCC Escrow shall:
- 4.1.1 at all times during the term of this Agreement, retain the latest deposit of the Material in a safe and secure environment;
  - 4.1.2 inform the Owner and the Licensee of the receipt of any deposit of the Material 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 Material 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 Material with NCC Escrow, NCC Escrow 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 Material.
- 4.3 NCC Escrow may appoint agents, contractors or sub-contractors as it deems fit to carry out the Integrity Testing and the Full Verification processes. NCC Escrow 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 Escrow has the right to make such copies of the Material as may be necessary solely for the purposes of this Agreement.

### 5 Payment

- 5.1 The parties shall pay NCC Escrow's standard fees and charges as published from time to time or as otherwise agreed, in the proportions set out in schedule 2. NCC Escrow's fees as published are exclusive of value added tax.
- 5.2 NCC Escrow 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 30 days from the date of invoice. NCC Escrow 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 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 Escrow of its release fee and any other fees and interest (if any) outstanding under this Agreement and (iii) the receipt by NCC Escrow of a signed confidentiality undertaking pursuant to clause 8.2 hereof, NCC Escrow will release the Material 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 Package; or
- 6.1.6 the Owner assigns its rights to the Intellectual Property Rights in the Material to a third party ("**Assignee**") and the Assignee fails, within 60 days of all parties knowledge of such assignment, to continue escrow protection for the benefit of the Licensee(s) by failing to enter into either:
- 6.1.6.1 a novation agreement with NCC Escrow 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 for the Package which offers the Licensee(s) substantially similar protection to that provided by this Agreement without significantly increasing the overall cost to the Licensee(s),
- provided that if the Assignee signs a novation or new escrow agreement within 60 days of all parties' knowledge of the assignment and a Licensee fails to consent to the novation or fails to register to or sign the new agreement within 30 days of the Licensee being notified of the signature of the novation or the new agreement by the Assignee, there shall be no Release Event under this clause in respect of that Licensee; or
- 6.1.7 the Owner or, where relevant, its agent, parent, subsidiary or associated company, is in material breach of its obligations as to maintenance or modification of the Package under the Licence Agreement or any maintenance agreement entered into in connection with the Package and has failed to remedy such default notified by the Licensee to the Owner within a reasonable period.
- 6.2 The Licensee must notify NCC Escrow of the Release Event specified in clause 6.1 by delivering to NCC Escrow 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 Package 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 Escrow shall reasonably require.
- 6.3 Upon receipt of a Declaration from the Licensee claiming that a Release Event has occurred:
- 6.3.1 NCC Escrow shall submit a copy of the Declaration to the Owner by courier or other form of guaranteed delivery; and
- 6.3.2 unless within 14 days after the date of despatch of the Declaration by NCC Escrow, NCC Escrow 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 Escrow will release the Material 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 Escrow 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 Escrow or, in any event, within 90 days of despatch of the counter-notice by NCC Escrow, the Licensee may give notice to NCC Escrow that they wish to invoke the dispute resolution procedure under clause 7.
- 6.6 If, within 90 days of despatch of the counter-notice by NCC Escrow to the Licensee, NCC Escrow 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 Material 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 Material shall not prejudice the Licensee's right to release of the Material and its use for the Release Purposes.

## **7 Disputes**

- 7.1 NCC Escrow shall notify the Owner of the Licensee's request for dispute resolution. Unless the Owner or the Licensee objects, NCC Escrow'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 7 days of registering their objection. If they fail to appoint an Independent Expert within this 7 day period, NCC Escrow 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 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 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 Escrow. 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 Escrow is hereby authorised to release and deliver the Material to the Licensee within 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 Material shall remain at all times the confidential and intellectual property of its owner.
- 8.2 In the event that NCC Escrow releases the Material to the Licensee, the Licensee shall be permitted to use the Material only for the Release Purposes and as a condition of release the Licensee shall be required to sign an undertaking to this effect.
- 8.3 NCC Escrow agrees to keep all Confidential Information relating to the Material and/or the Package that comes into its possession or to its knowledge under this Agreement in strictest confidence and secrecy. NCC Escrow 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.
- 8.4 Any request by a Licensee under clause 10.3 for a Full Verification shall not be disclosed to the other Licensees.

## **9 Intellectual Property Rights**

- 9.1 The release of the Material to the Licensee will not act as an assignment of any Intellectual Property Rights that the Owner or any third party possesses in the Material.
- 9.2 The Intellectual Property Rights in the Integrity Testing report and any Full Verification report shall remain vested in NCC Escrow. The Owner and the Licensee shall each be granted a non-exclusive right and licence to use the Integrity Testing report for the purposes of this Agreement and their own internal purposes only. The Owner and the party who commissioned the Full Verification shall each be granted a non-exclusive right and licence to use the Full Verification report for the purposes of this Agreement and their own internal purposes only.

## **10 Integrity Testing and Full Verification**

- 10.1 NCC Escrow 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 Material received by NCC Escrow

under this Agreement.

- 10.2 As soon as practicable after the Material has been deposited with NCC Escrow, NCC Escrow shall apply its Integrity Testing processes to the Material.
- 10.3 Any party to this Agreement shall be entitled to require NCC Escrow to carry out a Full Verification. Subject to clause 10.4, NCC Escrow's prevailing fees and charges for the Full Verification processes and all reasonable expenses incurred by NCC Escrow in carrying out the Full Verification processes shall be payable by the requesting party.
- 10.4 If the Material fails to satisfy NCC Escrow's Full Verification tests as a result of being defective or incomplete in content, NCC Escrow's fees, charges and expenses in relation to the Full Verification tests shall be paid by the Owner.
- 10.5 Should the Material deposited fail to satisfy NCC Escrow's Integrity Testing or Full Verification tests under clauses 10.2 or 10.3, the Owner shall, within 14 days of the receipt of the notice of test failure from NCC Escrow, deposit such new, corrected or revised Material 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 Material, NCC Escrow will issue a report to the Licensee detailing the problem with the Material as revealed by the relevant tests.

## 11 NCC Escrow's Liability

- 11.1 Nothing in this clause 11 excludes or limits the liability of NCC Escrow for fraudulent misrepresentation or for death or personal injury caused by NCC Escrow's negligence. Save as aforesaid the following provisions set out the entire financial liability of NCC Escrow (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the other parties:
  - 11.1.1 NCC Escrow shall not be liable for any loss or damage caused to either the Owner or the Licensee either jointly or severally except to the extent that such loss or damage is caused by the negligent acts or omissions of or a breach of any contractual duty by NCC Escrow, its employees, agents or sub-contractors and in such event NCC Escrow's total liability in respect of all claims arising under or by virtue of this Agreement or in connection with the performance or contemplated performance of this Agreement, shall not exceed the sum of £2,500,000 (two million five hundred thousand UK pounds); and
  - 11.1.2 NCC Escrow shall not be liable to the Owner or the Licensee for any indirect or consequential loss or damage whether for loss of profit, loss of business, depletion of goodwill or otherwise whatsoever or howsoever caused which arise out of or in connection with this Agreement even if such loss was reasonably foreseeable or NCC Escrow had been advised of the possibility of incurring the same by the Owner, the Licensee or any third party.
- 11.2 NCC Escrow 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.
- 11.3 NCC Escrow 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 involved in the dispute or litigation jointly and severally agree at all times to indemnify and hold harmless NCC Escrow 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 Escrow 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 Escrow, 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 Escrow in respect of the Material 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 30 days of its issue, NCC Escrow reserves the right to give that party

- written notice to pay the outstanding invoice within 30 days. If the Licensee has not paid its invoice by the expiry of the 30 day notice period, this Agreement will automatically immediately terminate in respect of the Licensee. If the Owner has not paid its invoice by the expiry of the 30 day notice period, NCC Escrow will give the Licensee(s) a period of 30 days to pay the Owner's invoice. If the Owner's invoice has not been paid by the expiry of the 30 day optional payment period given to the Licensee(s), this Agreement will automatically immediately terminate in respect of the relevant Licensee(s) or in its entirety (as appropriate). Any amounts owed by the Owner but paid by the Licensee(s) will be recoverable by the Licensee(s) direct from the Owner as a debt and, if requested, NCC Escrow shall provide appropriate documentation to assist in such recovery.
- 13.3 Upon termination of this Agreement in its entirety under the provisions of clause 13.2, for 30 days from the date of termination NCC Escrow will make the Material available for collection by the Owner or its agents from the premises of NCC Escrow during office hours. After such 30 day period NCC Escrow will destroy the Material.
- 13.4 Notwithstanding any other provision of this clause 13, NCC Escrow may terminate this Agreement by giving 30 days written notice to the Owner and the Licensee(s). In the event that it is terminated in its entirety, the Owner and the Licensee(s) shall appoint a mutually acceptable new custodian on similar terms and conditions to those contained herein. If a new custodian is not appointed within 14 days of delivery of such notice, the Owner or the Licensee(s) 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(s). If NCC Escrow is notified of the new custodian within the notice period, NCC Escrow will forthwith deliver the Material to the new custodian. If NCC Escrow is not notified of the new custodian within the notice period and this Agreement has been terminated in its entirety, NCC Escrow will return the Material to the Owner.
- 13.5 The Licensee may terminate this Agreement in respect of itself only at any time by giving written notice to NCC Escrow.
- 13.6 If NCC Escrow discovers that a Release Event has occurred and the Licensee(s) have failed to exercise their right to claim for release of the Material under clause 6.2, NCC Escrow shall have the right to terminate this Agreement in its entirety, upon 30 days written notice to the Owner and the Licensee(s). The Licensee(s) shall have the option of applying for release in accordance with clause 6 during this notice period, but if they fail to do so, upon the expiry of this notice period, this Agreement shall automatically terminate in its entirety. Where this Agreement is terminated in its entirety under this clause, unless instructed otherwise by the Owner or the Assignee prior to expiry of the notice period, NCC Escrow shall destroy the Material.
- 13.7 If the Intellectual Property Rights in the Material 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 Escrow shall be entitled to terminate this Agreement immediately by written notice to the Owner and the Licensee(s) and upon such termination, unless otherwise instructed by the Owner or the Assignee, NCC Escrow shall destroy the Material.
- 13.8 If the Licence Agreement with a Licensee has expired or has been lawfully terminated, then the Licensee shall give notice to NCC Escrow within 14 days thereof to terminate its interest under this Agreement, failing which, the Owner shall be entitled to give written notice to NCC Escrow to terminate the relevant Licensee's interests under this Agreement. Upon receipt of such a notice from the Owner, NCC Escrow shall notify the Licensee of the Owner's notice to terminate. Unless within 14 days of NCC Escrow giving such notice to the Licensee, NCC Escrow 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 the Licensee's rights under 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 of the entire agreement under this clause, NCC Escrow shall return the Material to the Owner.
- 13.9 Subject to clause 13.8, the Owner may only terminate the interests of any Licensee under this Agreement with the written consent of that Licensee.
- 13.10 The Owner may only terminate this Agreement in its entirety with the written consent of all Licensees.
- 13.11 This Agreement shall automatically immediately terminate in respect of a Licensee upon release of the Material to that Licensee in accordance with clause 6.
- 13.12 If this Agreement is superseded and replaced by a new agreement in respect of the Material, this Agreement shall, upon the coming into force of the new agreement in respect of a Licensee, automatically terminate in respect of that Licensee. When this Agreement has been terminated in respect of all Licensees who are registered under it, it shall immediately terminate in its entirety. The relevant party or parties shall request NCC Escrow to either transfer the Material 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 Escrow shall, unless otherwise instructed, destroy the Material.
- 13.13 The termination of this Agreement in respect of a Licensee shall be without prejudice to the continuation of this Agreement in respect of any other Licensees.

- 13.14 If any terminations of Licensees' interests under this Agreement result in there being no Licensees registered under this Agreement, unless otherwise instructed by the Owner, this Agreement will continue and the Material will be retained by NCC Escrow pending registration of other Licensees.
- 13.15 The provisions of clauses 1, 3.2, 3.3, 5, 8, 9, 10.1, 11, 12, 13.15 to 13.17 (inclusive) and 14 shall continue in full force after termination of this Agreement.
- 13.16 On and after termination of this Agreement, the Owner and/or the Licensee(s) (as appropriate) shall remain liable to NCC Escrow 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.
- 13.17 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 The Owner and the Licensee(s) shall notify NCC Escrow, within 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 14 days of any assignment or transfer by the Owner of any part of its Intellectual Property Rights in the Material, the Owner shall notify:
  - 14.2.1 NCC Escrow and the Licensee(s) 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, in respect of each Licensee, their Escrow Protection Certificate, their Order Form and any relevant NCC Escrow standard terms and conditions represent the whole agreement relating to the escrow arrangements between NCC Escrow, the Owner and that Licensee for the Package 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 their Escrow Protection Certificate (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), 2 business days after posting (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 shall not assign, transfer or subcontract this Agreement or any rights or obligations hereunder without the prior written consent of NCC Escrow and all the Licensees. A Licensee shall not assign, transfer or subcontract its rights under this Agreement without the Owner and NCC Escrow's prior written consent.
- 14.7 NCC Escrow shall be entitled to transfer or assign this Agreement upon written notice to both the Owner and all the Licensees.
- 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 months, any of the other parties shall be entitled to terminate this Agreement by giving one month's 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 [Ownername]

Name: ..... | .....

Position: ..... | (Authorised Signatory)

Signed for and on behalf of NCC ESCROW INTERNATIONAL LIMITED

Name: ..... | .....

Position: ..... | (Authorised Signatory)

**Schedule 1****The Package**

The software package known as [SoftwareName] or any other name(s) as may be given to it by the Owner from time to time.

**Schedule 2****NCC Escrow's Fees**

	DESCRIPTION	OWNER	LICENSEE
1	Annual Fee (per Licensee, payable on registration and in advance of each anniversary thereafter)	100%	Nil
2	Minimum Annual Fee (payable in arrears in the event that there are fewer than two Licensees registered on any anniversary of this Agreement; if the Agreement is terminated prior to its anniversary, the fee will be pro-rated for the period prior to termination; if one Licensee is registered on the Agreement's anniversary or on the date of its termination, the fee will be reduced by 50%).	100%	Nil
3	Scheduled Update Fee (3 <sup>rd</sup> and subsequent scheduled deposits in any one year, payable on completion of this Agreement and in advance of each anniversary thereafter)	100%	Nil
4	Unscheduled Update Fee (per unscheduled deposit)	100%	Nil
5	Release Fee (plus NCC Escrow's reasonable expenses)	Nil	100%

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

- Storage Fee for deposits in excess of 1 cubic foot;
- Integrity Testing Fee for deposits consisting of more than 5 media items.

Additional fees for any novation or replacement of this Agreement at the request of the Owner or the Licensee shall be paid by the Owner or the new owner of the Package (as appropriate) (unless otherwise agreed between the parties).