

Single Licensee Distributor Software Escrow Agreement

(Owner Deposits and Distributor Maintains)

Owner **[Ownername]**
Agreement Number **[Agreement#]**

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

Escrow Agreement:**Between:**

- (1) [Ownername] whose registered office is at [Owneraddress] ("**Owner**");
- (2) [Distributorname] whose registered office is at [Distributoraddress] ("**Distributor**");
- (3) [Licenseename] whose registered office is at [Licenseeaddress] ("**Licensee**"); and
- (4) NCC Group GmbH (CRN: 118479 München), Heimeranstrasse 37, 80339 München, Germany ("**NCC Group**").

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 Confidential Information and the 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, in order to guarantee continuity.

Agreement:

In consideration of the rights 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 this Software Escrow Agreement, including all Enclosures.

"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.

"Declaration" has the meaning as stated in clause 6.2.

"Full Verification" means the tests and processes forming NCC Group's Full Verification service (in accordance with Enclosure 2) 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 lawyer.

"Integrity Testing" means those tests and processes forming NCC Group's Integrity Testing service (in accordance with Enclosure 2), in so far as they can be applied to the Material.

"Intellectual Property Rights" means copyrights (including the originator's rights of personality), patents, design patents, registered designs, design rights, utility models, trademarks, service marks, trade secrets, know how, database 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 the Licensee was granted a licence to use the Package.

"Maintenance Agreement" means the agreement that regulates the maintenance of the Package.

"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 and/or deposited in accordance with clause 2 of this Agreement.

"Order Form" means the order form setting out the details of the order placed with NCC Group for setting up 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 Enclosure 1.

"Release Purposes" means the purposes of understanding, maintaining, modifying and correcting the Package or Material exclusively for and on behalf of the Licensee together with such other purposes 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 the Source Code which is not Confidential Information or Intellectual Property of the Owner or 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 Enclosures are references to clauses of and Enclosures to 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 Group within 30 days of the last date of signature of this Agreement by all of the parties;
 - 2.1.2 deliver a further copy of the Material to NCC Group each time that there is a change to the Package;
 - 2.1.3 ensure that each copy of the Material deposited with NCC Group comprises the Source Code of the latest version of the Package used by the Licensee;
 - 2.1.4 deliver to NCC Group a replacement copy of the Material within 30 days after the anniversary of the last delivery of the Material so that the integrity of the Material is maintained;
 - 2.1.5 deliver a replacement copy of the Material to NCC Group within 14 days of receipt of a notice given to it by NCC Group in accordance with clause 4.1.3;
 - 2.1.6 deliver with each deposit of the Material the following information:
 - 2.1.6.1 details of the deposited Material including the full name of the Package (i.e. the original name as set out under Enclosure 1 together with any new names given to the Package by the Owner), version details, media type, or data carrier, 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 (if 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 that know how to maintain and support the Material; and
 - 2.1.8 if required by the 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 Group and the Licensee at the time of each deposit of the Material with NCC Group 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 signed authorisation in the form required by NCC Group;
 - 2.2.3 in entering into this Agreement and performing its contractual obligations under it, it is not in breach of any 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 comprehend, 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 Group in conjunction with the Material pursuant to clause 2.1.8, it has the unrestricted 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 Package that necessitates a replacement deposit of the Material.
- 3.2 In the event that the Material is released in accordance with clause 6, the Licensee shall:
 - 3.2.1 treat the Material as 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 and/or contractors who need to know the same for the Release Purposes. In the event that the Material is disclosed to its employees and/or contractors, the Licensee shall ensure that they are bound by the same 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 in accordance with 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 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 Material in a safe and secure environment. NCC Group shall ensure that no unauthorised persons have access to this Material;
 - 4.1.2 inform the Owner, the Distributor and the Licensee of the receipt of any deposit of the Material. This will be done by sending to all parties a copy of the Integrity Testing report and/or Full Verification report (as the case may be) in accordance with clause 10; and
 - 4.1.3 notify the Owner, the Distributor and the Licensee if NCC Group becomes aware at any time during the term of this Agreement that the copy of the Material held by NCC Group has been lost, damaged or destroyed so that the Owner can procure a replacement in accordance with clause 2.1.5.
- 4.2 In the event of failure by the Owner to deposit any Material with NCC Group, NCC Group shall not be responsible for procuring such Material and may, at its sole discretion, notify the Licensee of the Owner's failure.
- 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 Material 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, according to the conditions set out in Enclosure 3. 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 prior written notice to the parties.
- 5.3 All invoices are payable within 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 at the legal rate of interest.

6 Release Events

- 6.1 Subject to the remaining provisions of this clause 6 and the receipt by NCC Group of its release fee in accordance with Enclosure 3 and any other contractual fees and interest (if any) outstanding under this Agreement, NCC Group 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 if insolvency proceedings have been opened without appeal on the assets of the Owner, or if this opening has been declined due to lack of assets; or
 - 6.1.1.2 if 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

- 6.1.1.3 if the Owner enters into a compromise or arrangement with creditors; or
- 6.1.1.4 if a liquidator has been appointed over all or any part of the Owner's assets or
- 6.1.1.5 if the Owner is dissolved;
- 6.1.2 if the Owner is an individual:
 - 6.1.2.1 if the Owner applies for insolvency proceedings to be opened in accordance with §§ 305, 311 of the Insolvency Act [customer insolvency]; or
 - 6.1.2.2 if the Owner enters into a compromise or arrangement with creditors; or
 - 6.1.2.3 if the Owner dies.
- 6.1.3 if any similar or analogous proceedings or events to those in clauses 6.1.1 and 6.1.2 above occur in respect of the Owner within any jurisdiction outside Germany ; or
- 6.1.4 if the Owner ceases to carry on its business or the part of its business which relates to the Package; or
- 6.1.5 if the Owner assigns its 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 by failing to enter into either:
 - 6.1.5.1 a novation agreement signed with the Licensee, the Distributor (if appropriate) and NCC Group for the assumption of the Owner's rights and obligations under this Agreement by the Assignee; or
 - 6.1.5.2 a new escrow agreement with the Licensee and the Distributor (if appropriate) for the Package which offers the Licensee 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 60 days of all parties' knowledge of the assignment and the Licensee fails to accept the Assignee's offer within 30 days of such offer being notified to the Licensee, this shall not constitute a Release Event.
- 6.1.6 if the Distributor 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 the Distributor has failed to remedy such default notified by the Licensee to the Owner within a reasonable period; or
- 6.1.7 where a Release Event has occurred under clause 6.1.6 and:
 - 6.1.7.1 the Owner has served a counter notice under clause 6.3.2.2 and/or 6.3.2.3; and
 - 6.1.7.2 the Owner or its newly appointed distributor (as appropriate) is in material breach of its obligations as to maintenance or modification of the Package under any agreement or obligations undertaken 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 Group of the Release Event specified in clause 6.1 by delivering to NCC Group an affirmation in lieu of an oath or notarised declaration ("**Declaration**") made by an officer of the Licensee. This Declaration must contain the facts and circumstances of the Release Event; in addition it must declare that the Licence Agreement and/or any Maintenance Agreement for the Package were still valid and effective up to the occurrence of such Release Event. These details contained in the Declaration must be presented by the Licensee in the form of relevant documents, and the Licensee must, in particular, make available to NCC Group copies of official documents relating to the Release Event (e.g. a copy of the official opening decision of any insolvency proceedings), if and as far as they are available. The Licensee must in addition present all of those documents that relate to the Release Event that NCC Group may legitimately demand.
- 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 and the Distributor 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 Group,
 - 6.3.2.1 NCC Group receives a counter-notice signed by a duly authorised officer of the Owner and/or Distributor that disputes the Release Event or documents that the event or circumstance giving rise to the Release Event has been rectified; or

6.3.2.2 if clause 6.1.6 applies and NCC Group receives a counter-notice signed by a duly authorised officer of the Owner stating that the Owner will assume directly and on similar terms:

6.3.2.2.1 the rights and obligations of the Distributor under this Agreement; and

6.3.2.2.2 any maintenance obligations of the Distributor under any Maintenance Agreement with the Licensee or under the Licence Agreement; and

the Owner within 14 days from the date of the counter-notice offers the Licensee the opportunity to enter into an agreement on terms which reflect the statements contained in the counter-notice; or

6.3.2.3 if clause 6.1.6 applies and NCC Group receives a counter-notice signed by a duly authorised officer of the Owner stating that:

6.3.2.3.1 the Owner has appointed a new distributor who will assume the rights and obligations of the Distributor under this Agreement, the Licence Agreement and/or any Maintenance Agreement; and

6.3.2.3.2 the new distributor shall accept the obligations of the Distributor by signing and delivering to NCC Group an agreement on the same terms and conditions as are contained in this Agreement immediately on its appointment; and

the Owner and the new distributor within 14 days from the date of the counter-notice offer the Licensee the opportunity to enter into an agreement on terms which reflect the statements contained in the counter-notice,

NCC Group will release the Material to the Licensee for the Release Purposes.

6.4 Upon receipt of a counter-notice from the Owner and/or Distributor in accordance with clause 6.3, 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 After the Licensee has received the counter-notice from NCC Group or, in any event, within 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 90 days of despatch of the counter-notice to the Licensee, NCC Group has not been informed by the Licensee that they want to invoke the dispute resolution procedure under clause 7, 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 in accordance with clauses 6.1.1 to 6.1.4, a later assignment of the Intellectual Property Rights in the Material by the Owner shall not prejudice the Licensee's right to release of the Material and its use for the Release Purposes.

7 Disputes

7.1 NCC Group shall notify the Owner and the Distributor of the Licensee's request for dispute resolution. Unless the Owner, the Distributor or the Licensee objects, NCC Group's Managing Director for the time being will appoint an Independent Expert to resolve the dispute. If the Owner, the Distributor 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 Group shall request that the President of the regional court in Munich 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 relevant parties 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 receipt of the written petition in accordance with clause 7.2 or as soon as practicable thereafter and to send a copy of that decision to the Owner, Licensee, Distributor and NCC Group. The Independent Expert's decision shall be final and binding on all parties and shall not be subject to appeal in a court procedure except in the case of manifest error.

7.4 If it emerges that the Independent Expert's decision is in favour of the Licensee, NCC Group 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 Group releases the Material to the Licensee, the Licensee shall be permitted to use the Material only for the Release Purposes.
- 8.3 NCC Group 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 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. This duty of confidentiality does not include information that an escrow agreement has been made. For its part, NCC Group will additionally oblige its staff, representatives and commissioners to maintain this confidentiality.

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 Group. The Owner, the Distributor 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 respective internal purposes only.

10 Integrity Testing and Full Verification

- 10.1 Beyond the obligations of NCC Group as laid down in clauses 10.2 – 10.5 below, NCC Group shall bear no further obligation or responsibility to any party to this Agreement to determine the existence, relevance, completeness, accuracy, operation, effectiveness, functionality or any other aspect of the Material received by NCC Group in accordance with this Agreement.
- 10.2 As soon as practicable after the Material has been deposited with NCC Group, NCC Group shall apply its Integrity Testing as described in greater detail in Enclosure 2 (Integrity Testing and Full Verification) to the Material.
- 10.3 Any party to this Agreement shall be entitled to require NCC Group to carry out a Full Verification as described in greater detail in Enclosure 2 (Integrity Testing and 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 paid by the requesting party.
- 10.4 If the Material fails 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 Material deposited fail to satisfy NCC Group'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 Group, 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 Group will issue a report to the Licensee detailing the problem with the Material as revealed by the relevant tests.

11 NCC Group's Liability

- 11.1 NCC Group shall be liable for compensation only in accordance with legal regulations, without limitation to the level of damages, caused through intent or gross negligence.
- 11.2 In addition, NCC Group shall be liable for compensation limited to damage that is typical for escrow work and is foreseeable for NCC Group, as long as a contractual commitment (cardinal obligation) has been negligently violated.
- 11.3 Subject to clause 10, NCC Group is not liable for the correctness, completeness, accuracy or other material usability of the Material.
- 11.4 The maximum amount of liability under clause 11.2 is limited to Euro 1.0 million in total, apart from for actual personal damage.

12 Indemnity

- 12.1 Save for any claim in accordance with clause 11, the Owner, the Distributor 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 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/or the Distributor and/or 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 Material as contemplated under this Agreement.

13 Term and Termination

- 13.1 If the Owner, the Distributor 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 Group 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 this further period of notice of 30 days, then NCC Group will be entitled to terminate this Agreement with immediate effect by written notice. If the Owner or the Distributor has not paid its invoice within this 30 day notice period, NCC Group will give the Licensee a period of 15 days to pay the Owner's or Distributor's invoice. If the Owner's or Distributor's invoice has not been paid by the expiry of the 15 day payment period given to the Licensee, then NCC Group will be entitled to terminate this Agreement with immediate effect by written notice. Any amounts owed by the Owner or the Distributor but paid by the Licensee will be recoverable by the Licensee direct from the relevant party as a debt and, if requested, NCC Group shall provide appropriate documentation to assist in such recovery.
- 13.2 Upon termination in accordance with clause 13.1, for 60 days from the date of termination NCC Group will make the Material available for collection by the Owner or its agents at the premises of NCC Group during office hours. At the end of this period of 60 days, NCC Group shall be entitled to destroy the Material.
- 13.3 Notwithstanding any other provision of this clause 13, NCC Group may terminate this Agreement at any time by giving 30 days written notice to the Owner, the Distributor and the Licensee. In that event, the Owner, the Distributor and the Licensee shall appoint an acceptable new custodian, to be jointly selected, 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, the Distributor or the Licensee shall be entitled to request a German notary 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, the Distributor and the Licensee. If NCC Group is notified of the new custodian within the notice period, NCC Group will forthwith deliver the Material to the new custodian. If NCC Group is not notified of the new custodian within the notice period, NCC Group will return the Material to the Owner.
- 13.4 The Licensee may terminate this Agreement at any time by giving written notice to NCC Group, the Owner and the Distributor. Upon such termination, NCC Group will return the Material to the Owner within a suitable time scale.
- 13.5 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 Material in accordance with clause 6.2, NCC Group shall have the right to terminate this Agreement upon 30 days' written notice to the Owner, the Distributor and the Licensee. The Licensee shall have the option of applying for release in accordance with clause 6 during this notice period. If it fails to do so, then NCC Group shall be entitled to destroy the Material 30 days after the end of the notice period unless otherwise instructed by the Owner or the Assignee within the notice period.
- 13.6 If the Intellectual Property Rights in the Material have been assigned to a third party and the proviso in clause 6.1.5 applies such that there has been no Release Event in accordance with that clause, NCC Group shall be entitled to terminate this Agreement immediately by written notice to the Owner, the Distributor and the Licensee. After this termination, unless otherwise instructed by the Owner or the Assignee, NCC Group shall be entitled to destroy the Material.
- 13.7 If the Licence Agreement has expired or has been terminated then the Licensee shall terminate this Agreement by written notice to NCC Group, the Owner and the Distributor within 14 days. If no notification is given, then the Owner and/or the Distributor shall be entitled to terminate this Agreement by giving written notice to NCC Group. Upon receipt of such a termination notice from the Owner and/or the Distributor, NCC Group shall notify the Licensee of this. Unless within 14 days of NCC Group issuing such a termination 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 agreement of the Licensee shall be assumed and this Agreement shall immediately automatically terminate. Any disputes arising under this shall be dealt with in accordance with the dispute resolution procedure set out in clause 7. Upon termination in accordance with this clause 13.7, NCC Group shall return the Material to the Owner.
- 13.8 Subject to clause 13.7, the Owner and/or the Distributor may only terminate this Agreement with

the written consent of the Licensee.

- 13.9 This Agreement shall automatically immediately terminate upon release of the Material to the Licensee in accordance with clause 6.
- 13.10 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, automatically terminate. The relevant party or parties shall request NCC Group 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 Group shall, unless otherwise instructed, destroy the Material.
- 13.11 The provisions of clauses 1, 3.2, 3.3, 5, 8, 9, 10.1, 11 12, 13.11 to 13.13 (inclusive) and 14 shall continue in full force after termination of this Agreement.
- 13.12 On and after termination of this Agreement, the Owner and/or the Distributor 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.
- 13.13 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 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:
- 14.1.3 NCC Group, the Distributor and the Licensee of such assignment and the identity of the Assignee; and
- 14.1.4 the Assignee of the provisions of clause 6.1.5.
- 14.2 This Agreement, together with the Order Form and any relevant NCC Group standard terms and conditions represents the whole agreement relating to the escrow arrangements between NCC Group and the other parties for the Package and shall supersede all prior agreements. In the event of any conflict between any of the above stated documents, the terms of this Agreement shall prevail.
- 14.3 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 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 recorded delivery, 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 confirmation.
- 14.4 The Owner, the Distributor 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.
- 14.5 NCC Group shall be entitled to transfer or assign this Agreement to a suitable company upon written notice to the Owner, the Distributor and the Licensee.
- 14.6 This Agreement shall be binding for the benefit of the successors in title and permitted assigns of the parties.
- 14.7 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 (in particular, but not limited to, fire, flood, explosion, epidemic, riot, civil commotion, any strike, lockout or other industrial action, act of God, war, 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.

- 14.8 Should a regulation in this Agreement be or become unworkable, then the validity of the rest of the Agreement will remain unaffected. The parties are obliged in such case to replace the unworkable regulation by one which the parties would have selected if they had known of the circumstance that caused the regulation to become unworkable. The same applies to the presence of a loophole.
- 14.9 If and insofar as nothing else is expressly anticipated in this Agreement, changes or supplements to this Agreement must be made in writing and be signed by a duly authorised officer of each party in order to become effective. This also applies to the waiving of the requirement of the written form.
- 14.10 This Agreement, including its enclosures, is subject to the law of the Federal Republic of Germany. The court of jurisdiction is Munich, unless the law imperatively prescribes another.
- 14.11 The place of performance and fulfilment is the headquarters of NCC Group or another place contractually agreed between the two parties.

Signed for and on behalf of [Ownername]

Date:

Name: |

Position: | (Authorised Signatory)

Signed for and on behalf of [Distributortname]

Date:

Name: |

Position: | (Authorised Signatory)

Signed for and on behalf of [Licenseename]

Date:

Name: |

Position: | (Authorised Signatory)

Signed for and on behalf of NCC Group GmbH

Date:

Name: |

Position: | (Authorised Signatory)

Enclosure 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.

Enclosure 2

Integrity Testing and Full Verification

Integrity Testing

The Integrity Testing service checks that the deposited material contains accessible Source Code. The results of the Integrity Testing are recorded in an Integrity Testing report along with details of all the items lodged. A copy of the Integrity Testing report is sent to all parties.

Integrity Testing consists of the following checks:

- Each item of media deposited is virus checked where appropriate. The anti-virus software used is listed in the report.
- Checks are made to ensure that each item of media can be read without error.
- If the data has been encrypted or password protected in any way then checks are made to ensure that the data can be accessed using the decryption key or password provided by the Owner.
- Checks are made to see if compression has been used, in which case tests are undertaken to ensure that the data can be decompressed. The compression utility used is listed in the report.
- Sample data is viewed to ensure that the deposit contains Source Code.
- Sample Source Code is viewed to check for the following:

Modification History

Source Code Comments

Source Code Indentation

Meaningful Variable/Procedure Names

Meaningful File Names

The results of the source code information checks do not affect the result of the Integrity Testing but provide further information on the legibility and maintainability of the source code.

- If necessary the Owner will be contacted and notified of any problems found during Integrity Testing and will be requested by NCC Group to correct these problems.

Full Verification

Full Verification provides assurances that the Material deposited with NCC Group includes the correct and complete Source Code for the software used by the Licensee.

The core components of a Full Verification are as follows:

- The Material to be deposited is built, with the full co-operation of the Owner, into the software application.
- The built software is tested to ensure that it is correct. This is usually carried out with the assistance of the Licensee.
- Integrity Testing checks are carried out at the conclusion of the verification process in order to ensure that the media being deposited in escrow is suitable for storing.
- The build and testing process is recorded in a Full Verification Test Report which is distributed to all parties.

The majority of Full Verifications takes place at the Owner's site as the Owner normally has the required development environment to compile and build the software being verified and has a suitable testing environment. The Licensee is also encouraged to attend the verification to assist in the testing of the built product.

Enclosure 3

NCC Group's Fees

	DESCRIPTION	OWNER	DISTRIBUTOR	LICENSEE
1	Annual Fee (payable on completion of this Agreement and in advance of each anniversary thereafter)	[OwnerAnnual]	[DistributorAnnual]	[LicenseeAnnual]
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)	[OwnerScheduled]	[DistributorScheduled]	[LicenseeScheduled]
3	Unscheduled Update Fee (per unscheduled deposit)	[OwnerUnscheduled]	[DistributorUnscheduled]	[LicenseeUnscheduled]
4	Release Fee (plus NCC Group's reasonable expenses)	Nil	Nil	100%

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 1 cubic foot;
- Any novation or replacement of this Agreement at the request of the Owner, the Distributor or the Licensee;
- Integrity Testing Fee for deposits consisting of more than 5 media items.