

LONDON CYCLE HIRE SCHEME AGREEMENT

Schedule 29 – Escrow Software

Schedule 29

Escrow Software

1. Escrow Software List

1.1 Details of the Service Systems Software used in the development, maintenance and support of each component of the Service Systems and Interfaces, including:

- (A) Service Provider Software;
- (B) Specially Written Software; and
- (C) Third Party Software (including relevant Software that is COTS),

are set out in Annex A and B (*Escrow Software List*) to this Schedule 29.

1.2 The Service Provider shall ensure that the Escrow Software List is complete and accurate at all times during the Term. All Escrow Software shall be listed in Annex A except for Third Party Software which is unreasonable for the Service Provider (having used reasonable commercial endeavours and having notified and consulted with TTL) to secure the source code to be held on escrow in accordance with this Schedule in which case it shall be listed in Annex B.

2. Escrow Software

2.1 The Service Provider shall, unless notified otherwise by TTL in writing:

- (A) promptly upon TTL's Approval of any Service Systems Software during the Implementation Phase;
- (B) at the commencement of the Systems Integration Testing, as described in Schedule 4 (*Testing Regime*);
- (C) no later than one (1) Month prior to the Planned Operational Commencement Date;
- (D) during the Operational Phase, within ten (10) Working Days of any major modifications or updates having been made to Escrow Software;
- (E) no later than fifteen (15) Working Days prior to each other Milestone Date; and
- (F) promptly following TTL's Approval of any Service Systems Software in connection with any Additional Services,

place the Source Code and/or object code (as provided for, respectively, by Annex A or Annex B to this Schedule 29), of the relevant part of the such Escrow Software, together with the associated Documentation in escrow with the National Computing Centre, Manchester, subject to paragraph 2.4 below, on the terms:

- (1) of the National Computing Centre's standard tripartite Agreement; and
- (2) set out in paragraph 2.6 below; and

(3) that the Service Provider and TTL shall from time to time agree.

2.2 The Service Provider shall thereafter keep current (in relation to the executable code of Escrow Software used to provide the Service Systems and Services) the:

(A) Source Code and/or object code (as provided for, respectively, by Annex A or Annex B to this Schedule 29) of major modifications to all Escrow Software; and

(B) associated Documentation,

by depositing the latest copy of the Source Code and/or object code (as provided for, respectively, by Annex A or Annex B of this Schedule 29) and Documentation with the National Computing Centre within the timeframe specified in paragraph 2.1 above.

2.3 All escrow costs shall be borne by the Service Provider during the Term.

2.4 This paragraph 2 shall not apply to Third Party Software, to the extent and during such period as such Third Party Software is:

(A) part of the TTL IPR, or not available from the Third Party proprietor(s) thereof in Source Code format to the Service Provider, provided that Third Party Software is at all times commercially available to TTL on substantially the same terms and conditions as under this Agreement; or

(B) deposited with a Third Party escrow agent on the basis of a source code deposit agreement and only available in Source Code format to the Service Provider on the occurrence of an event or on the exercise of a right specified in that source code deposit agreement, in which case the Service Provider shall, and (where appropriate) shall procure that its Sub-Contractors, procure that TTL is entitled to:

(1) the benefit of the source code deposit agreement; and

(2) receive a copy of the Source Code and object code for the deposited Third Party Software directly from the Third Party escrow agent on substantially the same basis as the Service Provider or any Sub-Contractor (as the case may be).

Details of all arrangements made by the Service Provider pursuant to this paragraph 2.4(B) shall be provided to TTL as part of the Asset Register and shall be kept current to within one (1) Month.

2.5 The Source Code and/or object code and associated Documentation placed in escrow pursuant to paragraphs 2.1 and 2.2 above shall provide adequate Information and instruction to enable TTL or a New Service Provider to make full and proper use of the Software to the extent provided in the licences granted in Schedule 41 (*Intellectual Property Rights*).

2.6 The Service Provider shall ensure that the National Computing Centre's standard tripartite Agreement includes (in addition to the standard release events provided for by such agreement) the following as release events for the Source Code and Documentation:

- (A) if:
 - (1) this Agreement expires; or
 - (2) notice of termination and, in the case of TTL, a Partial Termination Notice, is served by either Party for any reason whatsoever; or
 - (3) TTL exercises its Step-in Rights (and for the purposes of exercising such Step-In Rights requires access to relevant Source Code and Documentation);
- (B) if the Service Provider or a Guarantor is subject to, or if TTL reasonably believes that the Service Provider or a Guarantor may become subject to, an Insolvency Event;
- (C) if the Service Provider (or any Sub-Contractor) assigns its Intellectual Property Rights in the Escrow Software and the Service Provider (or any Sub-Contractor) fails to procure from the assignee within forty (40) Working Days of such assignment substantially similar protection for TTL to that provided by this Agreement without significantly increasing the cost to TTL;

and in such circumstances (and in any event when any other release event occurs under the National Computing Centre's standard tripartite agreement), the Service Provider will upon written request from TTL forthwith release to TTL a copy of the relevant Source Code and/or object code for the Escrow Software licensed under Schedule 41 (*Intellectual Property Rights*).

2.7 The Service Provider grants a presently usable licence, on release of the Source Code, object code and Documentation from escrow, in respect of the Source Code, object code and Documentation:

- (A) of the same type as is specified in Schedule 41 (*Intellectual Property Rights*); and
- (B) without limiting paragraph 2.7(A) above, to TTL to:
 - (1) use the Source Code, object code and Documentation (including a licence to sublicense use to TTL's contractor or a New Service Provider); and
 - (2) adapt and modify the Source Code in order to maintain, adapt and modify the Software,

so that TTL or the New Service Provider can receive full benefit of the licence of that Software under Schedule 41 (*Intellectual Property Rights*),

provided that in the case of release of Source Code and Documentation under paragraph 2.6(A) in connection with the operation of Step-In Rights or under Schedule 16 (*Exit Plan*), such licence shall last for so long as TTL requires for the purposes of exercising rights under those provisions.

- 2.8 The Service Provider shall provide to TTL, prior to any development, provision or use of Software and in accordance with the requirements of Milestones by the relevant Milestone Date, a list of that Software with technical details of the Software and whether it will be part of the Licensed Materials. If any Software is to be part of the Licensed Materials, TTL may (at TTL's absolute discretion) designate in writing to the Service Provider that the Software is to be Escrow Software and included in the Escrow Software List in accordance with paragraph 1.2. The Service Provider shall at all times thereafter keep that list accurate, complete and up to date (including any updates or upgrades to the Escrow Software or as otherwise envisaged under paragraph 1 (*Escrow Software List*) and paragraphs 2.1 and 2.2 above) and make a copy of that list available to TTL promptly upon request by TTL.
- 2.9 The Service Provider shall promptly update the Asset Register each time it places Software in escrow in accordance with paragraphs 2.1 and/or 2.2 indicating that the relevant Software is Escrow Software.
- 2.10 During the Term of this Agreement, TTL shall be entitled to procure that the National Computing Centre carry out full verification services upon the Software deposited into escrow pursuant to this Schedule 29 and listed in Annex A and B. The relevant verification services shall be defined, carried out pursuant to, and governed by, the National Computing Centre's then-current Standard Terms and Conditions for Verification Services. TTL shall be entitled to exercise its rights pursuant to this paragraph 2.10 not more frequently than once in any rolling 12-month period. The Service Provider shall bear the costs associated with procuring the relevant verification services.

Annex A – Escrow Software List – Source Code and Object Code to be Deposited

To be notified to TTL by the Service Provider

Annex B – Escrow Software List – Object Code Only to be Deposited

To be notified to TTL by the Service Provider