

SOFTWARE ESCROW AGREEMENT TEMPLATE
APRIL 2023 VERSION

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Agreement terms follow on page 2

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Single Beneficiary Software Escrow Agreement
Canada Jurisdiction
Agreement Number __

This Escrow Agreement (“Agreement”) is made on [INSERT DATE] by and among:

- 1) [Depositor Name, located at [registered address] (“Depositor”);
- 2) [Beneficiary Name, located at [registered address] (“Beneficiary”); and
- 3) Escrow London North America Inc located at 1050 Crown Pointe Parkway, Suite 500, Atlanta, Ga. 30338, United States of America (“Escrow London”)

Recitals:

- A. Depositor and Beneficiary have, or will have, entered into a software license Agreement (the “License Agreement”) pursuant to which Depositor has granted to Beneficiary a non-exclusive license to certain proprietary technology (“Product”).
- B. Continuous availability of such Product and the maintenance thereof are critical to Beneficiary in the conduct of its business.
- C. Beneficiary wishes to ensure that the build, maintenance and support of Product is available if Depositor fails to fulfill its obligations as set forth in the License Agreement or if Depositor enters into or is placed into bankruptcy proceedings or does not remain in business.
- D. Escrow London is in the business of providing third party escrow protection by storing, retaining and allowing limited access to proprietary technology.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

1. Definitions

1.1. In this Agreement the following terms shall mean the following:

“Agreement” means this Agreement including all Schedules and Appendices.

“Beneficiary” means any organisation, company or individual that has been granted a license to use the Product.

“Business Day” means a day, other than a Saturday, Sunday which is not a day on which banking institutions in Toronto, Ontario are authorized or obligated by law or executive order to close.

“Deposit Materials” means the proprietary technology including source codes, other materials and documentation required to build the Product.

“Electronic Upload” means an upload of data through the internet to a server managed by Escrow London.

“File Integrity Test” means the tests performed by Escrow London on the Deposit Materials to ensure the Deposit Materials can be accessed.

“Intellectual Property Rights” means any patents, copyrights, database rights, trademarks, confidential information, domain names and any other similar rights.

“License Agreement” means the agreement that entitles the Beneficiary to use the Product.

“Product” means the proprietary technology including any updates licensed to the Beneficiary as listed in Schedule 2.

“Source Code” means the computer code that was used to program the Product.

“Third Party” means an individual, organization or corporation that becomes an owner of the rights to the Intellectual Property in the Deposit Materials following an assignment of rights by the Depositor.

“Third Party Codes” means the Source Code that is not Intellectual Property of the Depositor, as well as any open source software and tools utilized in the Product.

“Verification Test” means the tests performed by Escrow London on the Deposit Materials as agreed between the parties.

2. DEPOSIT OF DEPOSIT MATERIALS

- 2.1. Promptly following the date noted above, and in any event within twenty (20) Business Days following the date hereof, Depositor shall submit to Escrow London a complete copy of the Deposit Materials by Electronic Upload.
- 2.2. The Depositor shall submit a further copy of the Deposit Materials promptly following (and in any event within twenty (20) Business Days of) a new release of the Product and ensure that it contains the Source

Code of the relevant version that has been updated. Beneficiary shall notify Escrow London of any change to the Product that necessitates a replacement deposit of Deposit Materials.

- 2.3. For each deposit of Deposit Materials following a new release, the Depositor will supply a deposit form including:
 - 2.3.1. Title name and version of Product, backup command/software used, compression used, archive hardware and operating system details;
 - 2.3.2. Password and/or Encryption keys to access the Deposit Materials;
 - 2.3.3. Detailed documentation detailing the process and software tools required for recompiling the Product; and
 - 2.3.4. Names and contact details of personnel that maintain the knowledge of the Product development, support and structure.
- 2.4. In the event that the Depositor utilizes the Electronic Upload service, on a scheduled basis as agreed upon by all the parties, the Depositor shall deposit with Escrow London a complete copy of the Source Code by Electronic Upload. It is the responsibility of the Depositor to provide and update Escrow London with a complete list of git or other version control system repository addresses active for the Source Code that are used in the Product licensed to the Beneficiary.
- 2.5. All parties understand that for Source Code and Deposit Materials deposited by Electronic Upload the (a) service requires access to and use of the internet and that the internet is an unregulated public network over which Escrow London exerts no control and (b) Escrow London has no responsibility for operating and maintaining the Depositor's servers and their connection to the internet to access and use the service.
- 2.6. Escrow London disclaims any warranty that the operation of the Electronic Upload service will be uninterrupted or error free. Further Escrow London shall have no liability whatsoever with respect to the accuracy, dependability, privacy, security, authenticity or completeness of data transmitted over the internet or any intrusion, virus disruption, loss of communication, loss or corruption of data, or other error or event caused or permitted by or introduced through the internet or the Depositor servers.
- 2.7. Depositor represents and warrants to Beneficiary and Escrow London that it has the right and authority to enter into this Agreement and grant to Beneficiary and Escrow London the rights as provided in this Agreement.
- 2.8. Depositor represents and warrants to Beneficiary that the Deposit Materials are sufficient to permit the build and support the Product, as it may be modified and updated from time to time.
- 2.9. Depositor represents and warrants to Beneficiary and Escrow London that, other than Third Party Codes, it owns all the Intellectual Property Rights in the Product.
- 2.10. If the Deposit Materials contain Third Party Codes, the Depositor warrants that it has been granted the valid rights under a license agreement from the owner of the Third-Party Codes. The Depositor must supply written authorization by the Third-Party Codes owner consenting to the deposit of the Third-Party Codes under this Agreement. In the event of a release of the Deposit Material, the Beneficiary shall be responsible to obtain the necessary licenses from the third party to utilize the Third-Party Codes. Depositor shall also provide (and update as necessary from time to time) a detailed list of the suppliers of any Third Party Codes required to access, install, build or compile or otherwise use the Deposit Material.
- 2.11. If the Deposit Material contains third party object code, the Depositor warrants that it has full authority from the owner of the Third-Party object code to make such a deposit.
- 2.12. Escrow London shall have no obligation to either party with respect to the preparation, accuracy, execution, update, or delivery of the Deposit Materials.
- 2.13. The Depositor grants Escrow London the rights to upload the Deposit Materials onto a secured computer system to perform Verification Tests and File Integrity Tests. Escrow London will remove the Deposit Materials from the computer system after completion of such tests.
- 2.14. Escrow London shall perform Verification Tests of the Deposit Materials according to additional services ordered by either party to verify the existence and legibility of the Deposit Materials as detailed in the Escrow London deposit form. Escrow London will invoice the party that ordered the Verification Test services according to the fees in Schedule 1. In the case that Escrow London is not satisfied that the Deposit Materials are complete and accurate, the Depositor will be obliged to pay the Verification Test fees.
- 2.15. If in the case that Escrow London is not satisfied that the deposit is complete and accurate, Escrow London will send a notice to the Depositor to make a new deposit within 30 days to ensure that it complies with its obligations under this Agreement.
- 2.16. In the event that a Verification Test is performed, Escrow London will provide a deposit report to the Depositor and Beneficiary following the Verification Test.
- 2.17. It is hereby agreed by the Depositor and Beneficiary that the File Integrity Test and the Verification Test does not constitute a warranty, either express or implied, by Escrow London with respect to the usability of the

Deposit Materials and does not constitute a warranty, either express or implied, by Escrow London that the Deposit Materials are accurate and complete.

- 2.18. Notwithstanding any other provisions of this Agreement, Escrow London shall have the right from time to time to appoint and utilize subcontractors for part, but not all, of the delivery of the services contemplated by this Agreement. As at signature, Escrow London confirms (and the Depositor and Beneficiary agree) that Escrow London may utilize the services of Escrow London Limited (UK) for delivery of services under this Agreement.

3. STORAGE AND SECURITY

- 3.1. Escrow London shall act as custodian of the Deposit Materials until the escrow is terminated pursuant to Section 8 of this Agreement.
- 3.2. Subject to Section 5.6 below, Depositor shall remain at all times the sole and exclusive owner of the Deposit Materials deposited with Escrow London pursuant to this Agreement and shall retain all rights and interests attached thereto.
- 3.3. Except as provided in or permitted or required by this Agreement, Escrow London agrees that:
 - 3.3.1. It shall not divulge, disclose or otherwise make available the Deposit Materials to any parties other than Depositor, or make any use whatsoever of the Deposit Materials;
 - 3.3.2. It shall not permit any person access to the Deposit Materials, except as may be necessary for Escrow London's authorized representatives to perform its functions under this Agreement;
 - 3.3.3. Access to the Deposit Materials by Depositor shall be granted by Escrow London only to those persons duly authorized in writing by an officer of Depositor;
- 3.4. Escrow London's sole responsibility to Depositor and Beneficiary under this Agreement shall be to accept, store and deliver the Deposit Materials deposited with it by Depositor, in accordance with the terms and conditions of this Agreement.

4. EVENTS OF DEFAULT

- 4.1. The occurrence of any of the following shall constitute an "Event of Default" for purposes of this Agreement:
 - 4.1.1. Depositor's material failure to support the Product in accordance with the License Agreement and failed to cure such material failure within ten (10) Business Days (or such other timeframe specified in the License Agreement) of Beneficiary's written notice to Depositor of such material failure;
 - 4.1.2. Depositor applies for or consents to the appointment of a trustee, receiver or other custodian for Depositor, or makes a general assignment for the benefit of its creditors;
 - 4.1.3. Any bankruptcy, reorganization, debt arrangement, or other case or proceeding under any bankruptcy or insolvency law, or any dissolution or liquidation proceedings commenced by or against Depositor, and if such case or proceeding is not commenced by Depositor if it is acquiesced in or remains undismissed for sixty (60) days;
 - 4.1.4. Depositor ceasing active operation of its business or discontinues the licensing or maintenance of the Deposit Materials in material breach of the License Agreement; or
 - 4.1.5. Depositor assigning its Intellectual Property Rights to the Product to a "Third Party" and within 60 days, the Third Party does not agree to offer the Beneficiary substantially similar protection to that provided by this Agreement without significantly increasing the cost to the Beneficiary.

5. RELEASE OF DEPOSIT MATERIALS

- 5.1. Upon the occurrence of any Event of Default, an officer of Beneficiary shall notify Escrow London by sending a statutory or notarized declaration as to such Event of Default (a "Notice"). The Notice shall include a reasonably detailed list of the circumstances and supporting facts of the Event of Default. Escrow London shall send a copy of the Notice to the Depositor by email.
- 5.2. Unless Escrow London receives Contrary Instructions (as defined below) by an Officer of Depositor within ten (10) Business Days after sending the Notice, the Deposit Materials then in escrow shall be delivered to Beneficiary by Escrow London within the next ten (10) Business Days following the end of such ten Business Day period.
- 5.3. "Contrary Instructions" for the purposes of this Agreement means a certificate executed by an Officer of Depositor stating that the Events of Default specified in the Notice have not occurred, or have been cured prior to the applicable period. This certificate must be sent to Escrow London by email.
- 5.4. Upon receipt of such Contrary Instructions, Escrow London shall send a copy of the Contrary Instructions to the Beneficiary and not release the Deposit Materials then in escrow, but shall continue to store the Deposit

Materials until otherwise directed in writing by Depositor and Beneficiary jointly or until resolution of the dispute pursuant to Section 6 of this Agreement.

- 5.5. Escrow London shall be entitled to receive payment of costs, fees and expenses due to it, prior, and as a condition precedent, to release of the Deposit Materials.
- 5.6. Unless otherwise provided in the License Agreement, upon release of the Deposit Materials in accordance with this Agreement, Beneficiary shall have the right to, and Depositor hereby grants the Beneficiary a worldwide, non-exclusive license to, use the Deposit Materials for the sole purpose of continuing the benefits afforded to Beneficiary pursuant to the License Agreement. The Beneficiary shall be obligated to maintain the confidentiality of the released Deposit Materials.

6. DISPUTE RESOLUTION

- 6.1. A dispute resolution may be requested within ten (10) Business Days of receipt of any Contrary Instructions pursuant to Section 5 of this Agreement. If Escrow London receives a call for dispute resolution by any of the parties pursuant to Section 5 hereof, Escrow London shall appoint a single independent arbitrator through the Canadian Arbitration Association in Toronto, Canada, and Depositor and Beneficiary each hereby agree to the resolution of such dispute by such arbitrator.
- 6.2. The parties shall submit all their claims including supporting documents in writing to the arbitrator within ten (10) Business Days following delivery of the request for dispute resolution. The sole question to be determined by the arbitrator shall be whether or not there existed an Event of Default at the time that the Contrary Instructions were delivered under Section 5. The decision by the arbitrator will be established on the written documentation submitted by all the parties without the requirement for a hearing.
- 6.3. Notwithstanding the applicable rules or arbitration, all arbitral awards shall be in writing and shall set forth in detail the findings of fact and conclusions of law of the arbitrator. The decision of the arbitrator shall be final and binding upon the parties and enforceable in any court of competent jurisdiction. The arbitrator shall immediately deliver a copy of such decision to Depositor, Beneficiary and Escrow London.
- 6.4. If the arbitrator finds that the Notice was properly given by the Beneficiary and that an Event of Default existed at the date Depositor had delivered the Contrary Instructions, Escrow London shall promptly deliver the Deposit Materials to the Beneficiary.
- 6.5. All fees and expenses charged by the arbitrator in the arbitration shall be paid by the non-prevailing party in the arbitration. Each party shall bear the cost of its own counsel's fees and expenses in connection with any arbitration or judicial proceeding brought hereunder.
- 6.6. The parties agree that the arbitration provided in this Section 6 shall not be consolidated or joined with any other proceeding regarding disputes between or among any of the parties.

7. INDEMNIFICATION; LIABILITY

- 7.1. Beneficiary and Depositor hereby jointly and severally indemnify, and shall keep indemnified, and hold harmless Escrow London (and any of its members, managers, officers, employees, affiliates and agents) from and against any and all damages, losses, costs, and any other liabilities or expenses or whatsoever kind, all whether direct or indirect and either awarded against, or agreed to be paid by, Escrow London (including reasonable attorneys' fees and expenses) ("Damages") that are suffered or incurred by Escrow London or to which it may otherwise become subject as result of:
 - 7.1.1. Escrow London becoming involved in, or required to be involved in, any form of dispute resolution proceedings or litigation arising out of or in relation to any matter between the Beneficiary and Depositor in relation to the subject matter of this Agreement or the License Agreement; and
 - 7.1.2. any claim by any third party for actual or alleged infringement of intellectual property rights in the Deposit Materials, including as a result of Escrow London conducting itself in accordance with the terms of this Agreement.
(collectively, "Claims").
- 7.2. In no event will Escrow London be liable for any incidental, indirect, special, exemplary, punitive or consequential damages, including, but not limited to, damages (including loss of data, revenue, and/or profits) costs or expenses (including legal fees and expenses), whether foreseeable or unforeseeable, that may arise out of or in connection with this Agreement; and in no event shall the collective liability of Escrow London exceed the annual escrow fees paid under this Agreement.
- 7.3. Escrow London shall incur no liability for, or in respect to, any action taken or omitted to be taken or anything suffered by it in reliance upon, any notice, direction, consent, certificate, affidavit, statement or other paper or document reasonably believed by Escrow London to be genuine and to have been presented or signed by the proper party or parties or a representative thereof;

- 7.4. Escrow London shall not at any time be under any duty or responsibility to make a determination of any facts contained in any certificate delivered pursuant hereto or to make any independent verification of the statements or signatures in such certificate or amounts delivered thereby. Escrow London shall not be responsible for any failure by Depositor or Beneficiary to comply with any of their respective covenants contained in this Agreement, the License Agreement or any other agreement;
- 7.5. Escrow London shall be under no duty or obligation to take any legal action in connection with this Agreement or to enforce, through the institution of legal proceedings or otherwise, any of its rights as escrow agent hereunder or any rights of any other party hereto pursuant to this Agreement or any other agreement, nor shall it be required to defend any action or legal proceeding which, in its opinion, would or might involve Escrow London in any cost, expense, loss or liability;
- 7.6. Escrow London (and its affiliates, subsidiaries, related entities or assigns) may engage or be interested in any financial or other transaction with the parties hereunder as freely as if it were not escrow agent hereunder, other than with respect to any and all matters pertinent hereto;
- 7.7. Depositor and Beneficiary hereby authorize Escrow London, if Escrow London is threatened with litigation or is sued, to interplead all interested parties in any court of competent jurisdiction and to deposit the Deposit Materials with the clerk of that court;
- 7.8. Nothing in this agreement shall limit or exclude any party's liability with respect to liability for death or personal injury caused by negligence.

8. TERMINATION

- 8.1. Unless earlier terminated as set forth below, the term of this Agreement shall commence on the date hereof for a period of one year and shall automatically renew from year to year.
- 8.2. If any party fails to pay an outstanding invoice issued for services under this Agreement, Escrow London will provide that party with written notice providing an additional thirty (30) days to pay that invoice.
- 8.3. In the event that the Beneficiary fails to pay the outstanding invoice following the notice period, Escrow London shall have the right to immediately terminate this Agreement by giving notice in writing to each of Depositor and Beneficiary.
- 8.4. In the event that the Depositor fails to pay the outstanding invoice following the notice period, Escrow London shall provide the Beneficiary the option of paying the due fees of the Depositor within thirty (30) days.
- 8.5. In the event that the Beneficiary fails to pay the outstanding invoice of the Depositor following the notice period, Escrow London shall be entitled to cancel the Agreement by providing immediate notice in writing to all the parties.
- 8.6. The Beneficiary may terminate this Agreement at any time by providing thirty (30) days' notice in writing to each of Depositor and Escrow London.
- 8.7. Escrow London may terminate this Agreement (for whatever reason) by providing sixty (60) days written notice to Depositor and Beneficiary.
- 8.8. In the event that the License Agreement is terminated, the Beneficiary or the Depositor shall each notify Escrow London in writing to terminate the rights of the Beneficiary under this Agreement. Upon receipt of such notice, Escrow London will notify the other party of the intention to terminate the rights of the Beneficiary under this Agreement. If within thirty (30) days, Escrow London does not receive a notice disputing the termination of the Agreement, then it will be deemed that the other party consented to the termination and the rights of the Beneficiary under this Agreement will be immediately terminated. If either party disputes the termination of the License Agreement, this Agreement will continue in full force, subject to the dispute resolution procedures set forth in Section 6.
- 8.9. In the event that the Depositor elects to terminate this Agreement, it shall obtain the written consent of Beneficiary to such termination and shall thereafter provide sixty (60) days written notice to Escrow London.
- 8.10. For 60 days following the termination of this Agreement, Escrow London will make the Deposit Materials then in escrow available to the Depositor to download but only after the payment of all costs, fees and expenses due to Escrow London in accordance with this Agreement. If the Deposit Materials are not downloaded within 60 days, Escrow London shall then have the option, without further notice to either party, to delete or destroy all Deposit Materials then in escrow.
- 8.11. At the time of Termination, all parties will be liable in full for their part of unpaid fees due to Escrow London.
- 8.12. The provisions of Sections 1, 5 through 12 shall survive the termination or expiration of this Agreement.

9. FEES

- 9.1. In consideration of performing its function as escrow agent hereunder, Escrow London shall be compensated by both parties in accordance with Schedule 1 attached hereto.
- 9.2. After the initial twelve (12) month term, the fees may be amended by Escrow London from time to time by giving written notice to both parties at least sixty (60) days prior to any increase in its fees.

10. FORCE MAJEURE

- 10.1. No party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure results from events, circumstances or causes beyond its 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, national or global pandemic, 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). In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for 3 months, the parties not affected may terminate this agreement by giving seven (7) days' written notice to the affected party.

11. NOTICES

- 11.1. All notices or other communications provided for by this Agreement shall be made in writing and shall be deemed properly delivered 48 hours after having been sent by email to the email addresses set forth below or to such other email address as any party may designate from time to time by notice, provided, however, that notice of change of email address shall be effective only upon actual receipt.

12. MISCELLANEOUS

- 12.1. This Agreement, including the Schedules hereto, constitutes the entire agreement among the parties regarding the subject matter hereof and supersedes all previous agreements, either oral or written, between the parties.
- 12.2. This Agreement shall be binding upon and survive for the benefit of the successors in title and permitted assigns of the parties.
- 12.3. No assignment of this Agreement by Depositor or Beneficiary or any rights or obligations of Depositor or Beneficiary under this Agreement is permitted without the written consent of Escrow London, which shall not be unreasonably withheld, conditioned or delayed. Escrow London shall have no obligation in performing this Agreement to recognize any successor or assign of Depositor or Beneficiary unless Escrow London receives clear, authoritative and conclusive written evidence of the change of parties.
- 12.4. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.
- 12.5. If any of the provisions of this Agreement shall be held by a court of competent jurisdiction to be contrary to law, the remaining provisions of this Agreement shall remain in full force and effect.
- 12.6. The section headings in this Agreement do not form a part of it but are for convenience only and shall not limit or affect the meaning of the provisions.
- 12.7. This Agreement may not be amended, modified, altered or supplemented other than by means of a written instrument duly executed and delivered on behalf of all parties hereto.
- 12.8. This Agreement shall be exclusively governed by and construed in accordance with the laws of Ontario, Canada. Except as provided in Section 6, any dispute arising under or in relation to this Agreement shall be resolved exclusively by the courts of the Province of Ontario, and the parties hereto irrevocably submit to the jurisdiction of such courts for such purposes.