



SINGLE BENEFICIARY SAAS ESCROW AGREEMENT TEMPLATE  
INCLUDING AUTOMATED GIT DEPOSITS  
SEPTEMBER 2020 USA VERSION

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Agreement terms follow on page 2

**SaaS Single Beneficiary SaaS Escrow Agreement**  
**USA Jurisdiction**  
**[Agreement Number EL\_\_\_\_\_]**

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

- 1) [Depositor Name, registered company number #####] located at [registered address] ("Depositor"),
- 2) [Beneficiary Name, registered company number #####] located at [registered address] ("Beneficiary"),
- 3) Escrow London LTD (registered number: 09997952) located at DataSpace UK, Wincham Business Park, Wincham Ave, Northwich Cheshire, CW9 6GB, United Kingdom ("Escrow London")

**Recitals:**

- A. Depositor and Beneficiary have entered into a SaaS Agreement (the "SaaS Agreement") pursuant to which Depositor has licensed the Beneficiary the rights to use a certain hosted software package and hosted Database.
- B. The Depositor and Beneficiary intend for this Agreement to be considered as supplementary to the SaaS Agreement pursuant to Section 365(n) of Title 11 of the United States Code and other applicable law.
- C. The Deposit Materials submitted under this Agreement shall be considered as "intellectual property" as defined in the United States Code.
- D. Continuous availability of such Product and the maintenance thereof are critical to Beneficiary in the conduct of its business.
- E. Beneficiary wishes to ensure that the manufacture, maintenance and support of Product is available if Depositor fails to fulfill its obligations as set forth in the SaaS Agreement or if Depositor does not remain in business.
- F. 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 the organisation, company or individual listed under this Agreement 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 New York City are authorized or obligated by law or executive order to close.

"Data" means the Beneficiary data hosted within the Product Database.

"Databases" means the database hosting the Beneficiary's Data.

"Deposit Materials" means the proprietary technology including source codes, system images, deployment scripts, other materials and documentation required to build the Product.

"Electronic Upload" means an upload of data or Databases through the internet to a Virtual Server.

"File Integrity Test" means the tests performed by Escrow London on the Deposit Materials to ensure the Deposit Materials can be accessed and are free of viruses.

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

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

"SaaS Agreement" means the agreement that entitles the Beneficiary to use the Product.

"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.

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

"Virtual Server" means a virtualized server hosted in the Escrow London datacenter or hosted within the infrastructure of a third party cloud vendor.

## **2. DEPOSIT OF DEPOSIT MATERIALS**

- 2.1. Promptly following the date hereof, 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 following a new release of the Product and ensure that it contains the Source Code of the relevant version that has been updated.
- 2.3. The Depositor shall obtain any third party rights, consents and permissions that are required in order for Escrow London to provide the services envisaged under this agreement and for the Beneficiary and Escrow London to exercise the rights granted to it under this Agreement.
- 2.4. For the initial deposit of Deposit Materials, the Depositor shall supply a deposit form including:
  - 2.4.1. Title name and version of Product.
  - 2.4.2. Password and/or Encryption keys to access the Deposit Materials and Database.
  - 2.4.3. Detailed documentation detailing the operating system, hardware, 3rd party software and software tools required for recompiling the Product.
  - 2.4.4. Names and contact details of personnel that maintain the knowledge of the Product development and structure.
- 2.5. The Depositor shall submit an updated deposit form in the event of;
  - 2.5.1. Any changes to the password and/or encryption keys required to access the Deposit Materials and Database.
  - 2.5.2. Any material changes to the documentation detailing the operating system, hardware, 3rd party software and software tools required for recompiling the Product.
  - 2.5.3. Any material changes to the names and contact details of personnel that maintain the knowledge of the Product development and structure.
- 2.6. 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 repository addresses active for the Source Code used in the Product licensed to the Beneficiary.
- 2.7. On a scheduled basis as agreed upon by all the parties, the Depositor shall replicate the encrypted Beneficiary Database to a Virtual Server maintained by Escrow London.
- 2.8. All parties understand that for Databases and Deposit Materials deposited and/or replicated 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 servers and their connection to the internet to access and use the service.
- 2.9. 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.
- 2.10. Depositor represents and warrants to Beneficiary and Escrow London that it has the right and authority to enter into this Agreement and grant to Escrow London and Beneficiary the rights as provided in this Agreement.
- 2.11. Depositor represents and warrants to Beneficiary that the Deposit Materials are sufficient to permit the manufacture, use and support of the Product, as it may be modified and updated from time to time.
- 2.12. Depositor represents and warrants to Beneficiary and Escrow London that it owns the Intellectual Property Rights in the Product.
- 2.13. If the Deposit Materials contain Third Party Codes, the Depositor warrants that it has been granted the valid rights under a license agreement with 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.
- 2.14. 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.

- 2.15. Escrow London shall have no obligation to either party with respect to the preparation, accuracy, execution or delivery of the Deposit Materials.
- 2.16. The Depositor grants Escrow London the rights to upload the Data, Deposit Materials and Databases onto a Virtual Server to perform Verification Tests and File Integrity Tests.
- 2.17. 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 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.
- 2.18. 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.
- 2.19. In the event that a Verification Test is performed, Escrow London will provide a Verification Report to the Depositor and Beneficiary following the Verification Test.
- 2.20. It is hereby agreed by the Depositor and Beneficiary that the File Integrity Test and the Verification Test does not warrant the usability of the Deposit Materials and Product and does not warrant that the Deposit Materials and Product are accurate and complete.
- 2.21. Escrow London may assign, subcontract, transfer, sublicense, or deal with any of its obligations and rights as set out in this Agreement. Escrow London shall ensure that all such parties are bound by the same confidentiality obligations as defined in this Agreement. As at signature, Escrow London confirms (and the Depositor and Beneficiary agree) that Escrow London may utilize the services of Dataspace (UK) Ltd for secure storage.

### **3. STORAGE AND SECURITY**

- 3.1. Escrow London shall act as custodian of the Deposit Materials and Databases until the escrow is terminated pursuant to Section 8 of this Agreement. The Deposit Materials and Databases may be stored on a Virtual Server and/or within a secure locked storage facility.
- 3.2. Subject to Section 5.7 below, Depositor shall remain at all times the sole owner of the Deposit Materials and Databases deposited with Escrow London pursuant to this Agreement and shall retain all rights and interests attached thereto.
- 3.3. Except as provided in this Agreement, Escrow London agrees that:
  - 3.3.1. It shall not divulge, disclose or otherwise make available the Deposit Materials and Databases to any parties other than Depositor, or make any use whatsoever of the Deposit Materials and Databases;
  - 3.3.2. It shall not permit any person access to the Deposit Materials and Databases, 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 and Databases by Depositor shall be granted by Escrow London only to those persons duly authorized in writing by an officer of Depositor.

### **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 Deposit Materials in accordance with the SaaS Agreement and failed to cure such material failure within ten (10) Business Days of Beneficiary's written notice to Depositor of such material failure;
  - 4.1.2. Depositor's application for or consent 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 SaaS 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 (as defined in Section 4.1), an officer of Beneficiary must notify Escrow London by sending a statutory or notarized declaration as to such Event of Default (a "Notice"). The Notice must include a list of circumstances of the Event of Default and should include any supporting facts. 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 10 Business Days after sending the Notice, the Deposit Materials and Databases then in escrow shall be made available to the Beneficiary by Escrow London within the next 10 Business Days following the end of such ten-day period.
- 5.3. "Contrary Instructions" for the purposes of this Agreement means a certificate executed by an official 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 and Databases then in escrow, but shall continue to store the Deposit Materials and Databases 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 and Databases.
- 5.6. Unless otherwise provided in the SaaS Agreement, upon release of the Deposit Materials and Databases in accordance with this Agreement, Beneficiary shall have the right to, and Depositor hereby grants the Beneficiary a worldwide, royalty-free, irrevocable, freely sublicensable, non-exclusive license to, use the Deposit Materials and Databases for the sole purpose of continuing the benefits afforded to Beneficiary pursuant to the SaaS Agreement. The Beneficiary shall be obligated to maintain the confidentiality of the released Deposit Materials and Databases.

## **6. DISPUTE RESOLUTION**

- 6.1. A dispute resolution may be requested within thirty (30) 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 an independent arbitrator through the American Arbitration Association in New York City, USA.
- 6.2. The parties shall submit all their claims including supporting documents in writing to the arbitrator within 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 make the Deposit Materials and the Databases available 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.

## **7. INDEMNIFICATION; LIABILITY**

- 7.1. Beneficiary and Depositor hereby indemnify, and shall keep indemnified, and hold harmless Escrow London (and any of its officers, employees and agents) harmless 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, direct or 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 of 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 SaaS 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 for that matter) 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 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 the Agreement by giving notice in writing.
- 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 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 the Agreement at any time by providing 30 days' notice in writing.
- 8.7. Escrow London may terminate the Agreement (for whatever reason) by providing 60 days written notice to Depositor, and Beneficiary.
- 8.8. In the event that the SaaS Agreement has been terminated, the Beneficiary or the Depositor must notify Escrow London in writing within 30 days 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 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 SaaS Agreement, this Agreement will continue in full force.

- 8.9. In the event that the Depositor elects to terminate this Agreement, they must provide 60 days written notice to Escrow London after receiving confirmation in writing from the Beneficiary.
- 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 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 and Databases 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 13 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 the Beneficiary in accordance with Schedule 1 attached hereto, which may be amended by Escrow London from time to time by giving written notice to both parties of at least 60 days prior to any increase in its fees.

## **10. FORCE MAJURE**

- 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 result from events, circumstances or causes beyond its reasonable control. 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. DATA PROTECTION AND DATA PROCESSING**

- 11.1. The parties shall process each other's data in accordance with Schedule 3.

## **12. NOTICES**

- 12.1. 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.

## **13. MISCELLANEOUS**

- 13.1. 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. For the avoidance of doubt, where there is any existing contract that sets out any obligation of confidentiality on Escrow London, the parties expressly confirm and acknowledge that the performance by Escrow London of its obligations under this Agreement (including the disclosure of the Deposit Materials) shall not constitute a breach of that earlier agreement.
- 13.2. 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.
- 13.3. 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 will remain in full force and effect.
- 13.4. 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.
- 13.5. 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.
- 13.6. This Agreement shall be exclusively governed by and construed in accordance with the laws of the State of New York. Except as provided in Section 6, any dispute arising under or in relation to this Agreement shall be resolved exclusively by the state or federal courts located in New York City, New York, and the parties hereto irrevocably submit to the jurisdiction of such courts for such purposes.

**SIGNATURE PAGE**

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the day and in the year first above written.

DEPOSITOR	
Company Name:	
Authorised Representative Name:	
Title:	
Email Address:	
Phone:	
Signature:	
BENEFICIARY	
Company Name:	
Authorised Representative Name:	
Title:	
Email Address:	
Phone:	
Signature:	
Escrow London LTD	
Authorised Representative Name:	
Title:	
Date:	
Signature:	

**SCHEDULE 1**

**SCHEDULE OF FEES**

Indicate the party responsible for each component of the fees payable to Escrow London by marking the column with an "X". If the cost is split between the Beneficiary and Depositor indicate the relevant percentage in each box.

<b>No</b>	<b>Component</b>	<b>Beneficiary</b>	<b>Depositor</b>
1	Annual Fee (Yearly retainer invoiced in advance)		
2	Additional Deposits (Payable on additional deposits over and above the included quota)		
3	Verification Services		

**SCHEDULE 2**

No	Product title*
1	

\*The Product title or any other title as assigned by the Depositor to the Product during this Agreement.

**SCHEDULE 3**  
**Data Protection**

**1. Personal Data Processing**

- 1.1. In this Schedule the terms 'Personal Data', 'Data Subject', 'Controller', 'Processor' and 'Processing' have the meanings given to them in the General Data Protection Regulation (EU) 679 of 27<sup>th</sup> April 2016 (the "GDPR").
- 1.2. Where Escrow London is the Controller in respect of any Personal Data received from the Depositor and / or Beneficiary (including names of instructing individuals, contacts, or other individuals), Escrow London shall process this information in accordance with its 'Privacy Policy' as published from time to time and viewable on request or on its website.
- 1.3. Where the Depositor and / or Beneficiary provides an individual's information to Escrow London for the administration or delivery of services including those uses described in 1.2, the Depositor and / or Beneficiary warrants and undertakes that it has the right and authority to disclose such information and in turn fulfil (and have fulfilled) its requirements in accordance with the GDPR and have explained how Escrow London shall use that persons Personal Data in accordance with its Privacy Policy (to discharge the requirements of Article 13 and Article 14 of the GDPR).
- 1.4. Unless expressly stated otherwise in an order, the Parties acknowledge that the Depositor and / or Beneficiary is the Controller and Escrow London is the Processor in respect of all Personal Data processed pursuant to the services, and further acknowledge that such Personal Data shall be processed by Escrow London in order to perform the services to be delivered in accordance with the agreement to which this schedule is appended and only for the duration agreed in writing by the Parties in an order. This shall also indicate the nature and purpose of the processing, the type of data to be processed and the categories of data subjects involved.
- 1.5. In processing any Personal Data, and subject to any provisions stating otherwise in an order, Escrow London shall:
  - 1.5.1. only process the Personal Data on behalf of the Depositor and / or Beneficiary, for the sole purposes determined by the Depositor and / or Beneficiary and in accordance with the written instructions given by the Depositor and / or Beneficiary. The Depositor and / or Beneficiary shall be solely responsible for the compliance of Personal Data processing with the requirements set out in articles 5 and 6 of the GDPR;
  - 1.5.2. not disclose any of the Personal Data to any third party (including for the avoidance of doubt the Data Subject itself), unless specifically authorised in writing by the Depositor and / or Beneficiary or so required by the law, making sure that all people processing the Personal Data are at all times under a legal obligation to preserve the confidentiality of the Personal Data;
  - 1.5.3. at all times comply with the GDPR to the extent applicable to a Processor and, in so doing, implement the appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure;
  - 1.5.4. at the written request of the Depositor and / or Beneficiary, to be submitted with at least 5 working days advance notice, and no more than once in every 12 month period, submit its data processing facilities, during normal business hours and in a manner to cause minimal disruption to operations, for audit of the processing activities. The audit shall be conducted by the Depositor and / or Beneficiary or by an independent auditor mandated by the Depositor and / or Beneficiary and approved by Escrow London. The party conducting the audit shall be

bound by a duty of confidentiality and the cost of the audit shall be borne by the Depositor and / or Beneficiary;

- 1.5.5. promptly notify the Depositor and / or Beneficiary if: i) it receives a request from a Data Subject to have access to that person's Personal Data; ii) it receives a complaint or request relating to the Depositor and / or Beneficiary's obligations under the Data Protection Legislation; (iii) it receives any other communication directly relating to the processing of any Personal Data and its security in connection with the services; iv) it becomes aware of any threatened or actual accidental, unauthorised or unlawful destruction, loss, alteration, or unauthorised disclosure of, or access to the Personal Data; v) it becomes aware of any breach of the GDPR by Escrow London or by any of its subcontractors in the processing carried out services;
- 1.5.6. provide the Depositor and / or Beneficiary with co-operation and assistance in relation to the Depositor and / or Beneficiary's obligation to respond to requests for exercising the Data Subject's rights contemplated in the GDPR, to the extent that such requests concern the processing of Personal Data carried out by Escrow London on behalf of the Depositor and / or Beneficiary. Escrow London will charge a reasonable amount for the assistance and cooperation given to the Depositor and / or Beneficiary in such respect, except in cases where Data Subject's rights are claimed to have been breached and the alleged breach is directly attributable to Escrow London having acted outside of or contrary to the lawful instructions of the Depositor and / or Beneficiary;
- 1.5.7. in its capacity as Data Processor, keep or cause to be kept full and accurate records relating to all processing of Personal Data carried out in performance of Works;
- 1.5.8. provide, at the Depositor and / or Beneficiary's cost, such assistance to the Depositor and / or Beneficiary as the Depositor and / or Beneficiary may reasonably require, to allow the Depositor and / or Beneficiary to comply with its obligations as Controller pursuant to articles 32 to 36 of the GDPR, taking into account the nature of processing, the information available to Escrow London and those available to the Depositor and/or Beneficiary;
- 1.5.9. not transfer Personal Data outside the European Economic Area without the express written consent of the Depositor and / or Beneficiary;
- 1.5.10. when notified in writing by the Depositor and / or Beneficiary at any time, immediately cease to process the Personal Data and promptly arrange for its secure return or destruction (though the Depositor and / or Beneficiary acknowledges that Escrow London shall not be in breach of any of its obligations where it requests such deletion by Escrow London which prevents or delays Escrow London's timely performance).
- 1.6. Depositor and / or Beneficiary expressly authorises Escrow London to subcontract processing of Personal Data to a third party sub-processor who is identified within the agreement or from time to time (i.e. a subcontractor) on the basis that their inclusion is a general authorisation of the same, provided that Escrow London shall remain liable to Depositor and / or Beneficiary within the limits set out in the agreement for the acts, errors and omissions of any sub-processor it appoints to process the Personal Data.
- 1.7. The Depositor and / or Beneficiary acknowledges that Escrow London shall not be liable for any loss or destruction of any Personal Data caused by the Depositor and / or Beneficiary or any third party (other than a sub-contractor of Escrow London).
- 1.8. Liabilities and indemnities shall be allocated and quantified as set out in the agreement, subject however to the principles set out in article 82 of the GDPR.