SOURCE CODE ESCROW AGREEMENT

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This Source Code Escrow Agreement (the “Agreement”) takes effect on [DATE],

**BETWEEN: [FIRST PARTY NAME]** (the "First Party"), a company organised and existing under the laws of [COUNTRY], with its headquaters located in:

[YOUR COMPLETE ADDRESS]

**AND: [SECOND PARTY NAME]** (the "Second Party"), a company organised and existing under the laws of [COUNTRY], with its headquarters located in:

[COMPLETE ADDRESS]

**AND: [THIRD PARTY NAME]** (the "Escrow Agent"), a company organised and existing under the laws of [COUNTRY], with its head office located

at:

[COMPLETE ADDRESS]

WHEREAS the First Party and Second Party have entered into a Methodology and Software Licence Agreement dated [EFFECTIVE DATE] (the ”Main Agreement”), pursuant to which the First Party has, among other things, granted a non-exclusive licence to the Second Party with respect to Licenced Products, defined in article [NUMBER] of the Main Agreement (hereinafter: the “Licenced Products”).

WHEREAS it is the policy of the First Party not to disclose to its customers the Source Codes for the Licenced Products and related documentation, except as provided in an applicable Escrow Agreement.

WHEREAS the First Party and the Second Party agree that, upon the occurrence of certain events described in Paragraph 4.1 hereof, the Second Party shall be able to obtain the Source Code (as defined in Paragraph 2, below) from the Escrow Agent for the purposes described herein. Accordingly, the First Party agrees to deliver the Source Code to the Escrow Agent upon the terms and conditions described below.

NOW, THEREFORE, in consideration of the mutual covenants exchanged herein and for other valuable consideration, the adequacy and receipt of which are hereby acknowledged, the First Party, Second Party and the Escrow Agent hereby agree as follows:

1. **DEPOSITS**

The Escrow Agent, as a safekeeping escrow agent, agrees to accept from the First Party, for storage purposes only, the Source Code and any revisions, corrections, enhancements, upgrades, updates, modifications, new releases, supplements or other changes thereto and any related documentation to which the Second Party is entitled under the Main Agreement so that such Source Code constitutes a human-readable programme for all of the Licenced Products (hereinafter collectively referred to as the “Source Code”). For each delivery of the Source Code or supplements thereto to the Escrow Agent, the Escrow Agent will:

* 1. issue a receipt to the First Party with respect to each such delivery, which receipt shall identify any modifications, revisions or supplements made to the Source Code; and
  2. furnish to the Second Party a copy of the receipt provided to the First Party under this paragraph 1.1;
  3. the delivery of such receipt from the Escrow Agent to the Second Party shall constitute notice to the Second Party that the information listed therein is delivered to the Escrow Agent. Upon the request of the Second Party, the Escrow Agent shall supply to the Second Party copies of each receipt furnished by the Escrow Agent to the First Party hereunder;
  4. the First Party shall bear the cost of preparation of the escrowed materials. The Source Code held by Escrow Agent shall remain the exclusive property of the First Party, and Escrow Agent shall not use the Source Code or disclose same to any third party except as specifically provided for herein. Escrow Agent shall hold the Source Code in safekeeping at its offices hereinabove indicated unless and until the Escrow Agent receives notice pursuant to the terms of this Agreement that the Escrow Agent is to deliver the Source Code to the Second Party or the First Party, in which case the Escrow Agent shall deliver the Source Code to the party identified therein, subject, however, to the provisions of this Escrow Agreement.

1. **REPRESENTATIONS AND COVENANTS OF [COMPANY NAME] TO [COMPANY NAME]**

The First Party represents and warrants to the Second Party that:

* 1. the material delivered to the Escrow Agent hereunder constitutes the Source Code for all of the Licenced Products; and
  2. the Source Code delivered to the Escrow Agent is in a form suitable for reproduction by computer and/or photocopy equipment, and consists of a full source language statement of the programme or programmes comprising the Licenced Products and complete programme maintenance documentation, including all flowcharts, schematics and annotations, and all other material necessary to allow a reasonably skilled third-party programmer or analyst to maintain or enhance the Licenced Products without the help of any other person or reference to any other material.

The First Party covenants to the Second Party that the First Party will promptly supplement the Source Code delivered hereunder with all revisions, corrections, enhancements, upgrades, updates, modifications, new releases, supplements or other changes thereto and any related documentation to which the Second Party is entitled under the Main Licence Agreement, so that such Source Code constitutes a human-readable programme for all of the Licenced Products.

1. **AUDIT RIGHTS**
   1. The Second Party’s Audit Rights. Upon reasonable notice, during normal business hours and the term of this Agreement, the Second Party at its own expense will be entitled to inspect the physical status and condition of the materials deposited with the Escrow Agent under this Agreement. Any deposits already made may not be changed during the audit.
   2. The First Party’s Audit Rights. Upon reasonable notice, during normal business hours and the term of this Agreement, The First Party at its own expense will be entitled to inspect the physical status and condition of the materials deposited with the Escrow Agent under this Agreement. Any deposits already made may not be changed during the audit.
2. **NOTICE OF DEFAULT**
   1. The Second Party shall give written notice (the “Notice of Default”) to the Escrow Agent of any of the following events of default hereunder by the First Party (a “Default”):
      1. The First Party or any permitted successor or assign makes a general assignment for the benefit of creditors or admits in writing that it is unable to pay its debts as they mature; or
      2. any court appoints a trustee or receiver of any substantial part of the First Party's (or a permitted successor's or assign's) assets; or
      3. The First Party or any permitted successor or assign ceases to function as a going concern,
      4. The First Party or any permitted successor or assign commits an Act of Insolvency,
      5. The First Party or any permitted successor or assign files a petition in bankruptcy or such a petition is filed against it and is acquiesced in or is not dismissed within [NUMBER] days or results in an adjudication of bankruptcy; or
      6. If the First Party or any permitted successor or assign otherwise ceases to manufacture the Licenced Products.
      7. The First Party or any permitted successor or assign commits a material breach or default of its obligations further to an article [NUMBER] of the Main Agreement or under this Agreement and fails to cure such breach or default within the applicable cure period. The Notice of Default shall be at a minimum
         1. be labelled “Notice of Default”,
         2. identify the Main Agreement and this Escrow Agreement,
         3. specify the nature of the Default,
         4. demand the delivery of the Source Code to the Second Party in accordance with this Escrow Agreement.
   2. Upon receipt of the Notice of Default, the Escrow Agent shall send a copy thereof to the First Party by certified or registered mail, postage prepaid, return receipt requested. If the First Party desires to dispute the Notice of Default, then the First Party shall, within [NUMBER] days after receipt of the Notice of Default from the Escrow Agent, deliver to the Escrow Agent a statement (the “First Party Affidavit”) saying that no Default has occurred, whereupon the provisions of Paragraph [NUMBER] hereof will become applicable. If the First Party delivers the First Party Affidavit to the Escrow Agent within [NUMBER] days period, the Escrow Agent shall send a copy thereof to the Second Party by certified or registered mail, return receipt requested, and the Escrow Agent shall continue to hold the Source Code in accordance with this Escrow Agreement. If the First Party Affidavit is not delivered to the Escrow Agent within the required [NUMBER] day period, the Escrow Agent shall deliver the Source Code to the Second Party for the purposes described herein.
   3. Notwithstanding delivery of the Source Code to the Second Party in accordance with the terms hereof, the First Party and its licensors shall remain the owners of the Source Code. Upon such delivery, the Second Party shall have a worldwide non-exclusive, perpetual, royalty-free licence to use, reproduce, modify the Source Code and to authorise others to do so for the purposes of making, copying, modifying, reproducing, updating, enhancing, maintaining, correcting, upgrading, distributing and transmitting the Licenced Products.
3. **MAIN AGREEMENT TERMINATION NOTICE**
   1. The First Party shall give written notice (the “Main Agreement Termination Notice”) to the Escrow Agent if the Main Agreement has been terminated in a manner, which does not entitle Second Party to any further licence thereunder. The Main Agreement Termination Notice shall
      1. be labelled “Main Agreement Termination Notice”;
      2. identify the Main Agreement and this Escrow Agreement;
      3. state that the Main Agreement has been terminated in a manner which does not entitle [COMPANY NAME] to any further licence thereunder; and
      4. demand the delivery of the Source Code to the First Party.
   2. Upon receipt of the Main Termination Notice, the Escrow Agent shall send a copy thereof to the Second Party by certified or registered mail, postage prepaid, return receipt requested. If the Second Party desires to dispute the Main Agreement Termination Notice, then the Second Party shall, within [NUMBER] days after receipt of the Main Agreement Termination Notice from the Escrow Agent, deliver to the Escrow Agent a statement (the “Second Party Affidavit”) saying that the termination has not occurred in accordance with the Main Agreement Termination Notice, whereupon the provisions of Paragraph [NUMBER] hereof will be applicable. If the Second Party Affidavit is delivered to the Escrow Agent within [NUMBER] days period, the Escrow Agent shall send a copy thereof to the First Party by certified or registered mail, return receipt requested, and the Escrow Agent shall continue to hold the Source Code in accordance with this Escrow Agreement. If the Second Party Affidavit is not delivered to the Escrow Agent within the required [NUMBER] day period, the Escrow Agent shall deliver the Source Code to the First Party, provided that all fees payable to the Escrow Agent for the performance of its services hereunder have been paid in full.
   3. Disputes. In the event that the First Party files the First Party Affidavit with the Escrow Agent in the manner and within the time period set forth in Paragraph 4.2 hereof, or if the Second Party files the Second Party Affidavit with the Escrow Agent in the manner and within the period set forth in Paragraph 5.1 hereof, then the Escrow Agent shall not release the Source Code to either party except in accordance with

5.3.1 an order of a court of competent jurisdiction, or

5.3.2 receipt of a written agreement agreed by both the First Party and the Second Party, authorising the release of the Source Code to one of the parties hereto.

1. **PAYMENT TO ESCROW AGENT**

As payment for its services hereunder, the Second Party shall pay to the Escrow Agent in a timely fashion the fees outlined in Appendix 1. In the event of nonpayment of Escrow Agent’s fees by the Second Party, Escrow Agent shall give both parties [NUMBER]) days’ notice thereof. If the [NUMBER] day notice period elapses without Escrow Agent having received payment from either party, Escrow Agent shall then have the option, without further notice to either party, to terminate this Escrow Agreement. Upon such termination, Escrow Agent shall send to the First Party the Source Code and all other escrowed material hereunder.

1. **LIMITATION ON ESCROW AGENT’S RESPONSIBILITY AND LIABILITY**
   1. The Escrow Agent shall not be obligated or required to examine or inspect the Source Code, or any of the revisions thereto deposited with Escrow Agent hereunder. In addition, the Escrow Agent shall not be required to determine the accuracy or completeness of any materials furnished by the First Party hereunder, nor shall the Escrow Agent be responsible for any materials not actually deposited with it, whether or not such materials were required to be deposited under the terms of this Escrow Agreement, any licence agreement between the First Party and the Second Party, or any other agreement. The Escrow Agent’s obligation for safekeeping shall be limited to providing the same degree of care for the Source Code as it maintains for its valuable documents and those of its customers lodged in the same location with appropriate atmospheric or other safeguards. However, the parties agree and acknowledge that the Escrow Agent shall not be responsible for any loss or damage to any of the Source Code due to changes in such atmospheric conditions (including, but not limited to, failure of the air conditioning system), unless such changes are proximately caused by the gross negligence or malfeasance of the Escrow Agent.
   2. The Escrow Agent shall be protected in acting upon any written notice, request, waiver, consent, receipt or other paper or document furnished to it, not only in assuming its due execution and the validity and effectiveness of its provisions but also as to the truth and acceptability of any information therein contained, which is in good faith believes to be genuine and what it purports to be.
   3. In no event shall the Escrow Agent be liable for any act or failure to act under the provisions of this Escrow Agreement except where its acts are the result of its negligence or malfeasance. The Escrow Agent shall have no duties except those which are expressly set forth herein, and it shall not be bound by any notice of a claim, or demand with respect thereto, or any waiver, modification, amendment, termination or rescission of this Escrow Agreement, unless in writing received by it, and, if its duties herein are affected, unless it shall have given its prior written consent thereto.
   4. The parties to this Escrow Agreement hereby jointly and severally indemnify the Escrow Agent against any loss, liability, or damage (other than any caused by the gross negligence or malfeasance of the Escrow Agent), including reasonable costs of litigation and counsel fees, arising from and in connection with the performance of its duties under this Escrow Agreement.
2. **RESIGNATION OF ESCROW AGENT; TERMINATION OF BUSINESS**
   1. The Escrow Agent may resign upon [NUMBER] days’ prior written notice to the parties in this Escrow Agreement. If a successor escrow agent is not appointed by the parties within [NUMBER] day period, the Escrow Agent may petition the Courts of the [PROVINCE] OR [COUNTRY] to name a successor. Until the parties or the court appoint such successor, and the Source Code is properly transferred to such successor, Escrow Agent shall continue to abide by the terms of this Escrow Agreement regarding maintenance and safekeeping of the Source Code.
   2. The Escrow Agent shall, as promptly as practicable, notify each of the Second Party and the First Party of any plans to file for bankruptcy, merge, dissolve, sell all of its assets or other similar transaction (a “Termination of Business”) substantially. In the event of a Termination of Business, each and every successor to the business of Escrow Agent, whether a trustee in bankruptcy, a surviving company in a merger, Escrow Agent’s directors in a dissolution, the purchaser of substantially all of Escrow Agent’s assets, or otherwise, shall be bound hereby as Escrow Agent hereunder.
3. **TERMINATION**

This Escrow Agreement shall terminate on the delivery of the Source Code to either party in accordance with the terms of this Escrow Agreement. In addition, upon [NUMBER] days’ prior written notice (the “Escrow Termination Notice”) signed jointly by the First Party and the Second Party, the First Party and the Second Party may terminate this Escrow Agreement, and Escrow Agent shall during [NUMBER] day period deliver the Source Code in accordance with the terms of the Escrow Termination Notice.

1. **NOTICES**

Any notice or communication required or permitted to be given or to be served upon any party hereto in connection with this Escrow Agreement must be in writing, and shall be deemed sufficient and given when personally delivered or give [NUMBER] days after being deposited in the Mail, certified or registered, return receipt requested, with postage prepaid, or upon acknowledgment of receipt of electronic transmission, addressed as follows:

If to First Party:

If to Second Party

If to Escrow Agent:

Any party hereto may, at any time by giving [NUMBER] days’ prior written notice to the other party hereto, designate any other address in substitution of the preceding address to which such notice shall be given and other parties to whom copies of all notices hereunder shall be sent.

1. **WAIVER, AMENDMENT OR MODIFICATION; SEVERABILITY**

Except as provided in Paragraph [NUMBER], above, this Escrow Agreement shall not be waived, amended, or modified without the written agreement of all the parties hereto. Any invalidity, in whole or in part, of any provision of this Escrow Agreement, shall not affect the validity of any other of its provisions.

1. **PARTIES BOUND**

The rights created by this Escrow Agreement shall inure to the benefit of, and the obligations created hereby shall be binding upon, the successors and assign of all parties to this Escrow Agreement.

1. **GOVERNING LAW**

This Escrow Agreement shall be construed and enforced according to the [YOUR COUNTRY LAW] in force in the Province of [PROVINCE].

1. **CAPTIONS**

The marginal headings and numbers to the paragraphs in this Escrow Agreement are solely for the convenience of reference and shall be given no effect in the construction or interpretation of this Escrow Agreement.

1. **DEFINED TERMS**

All capitalised terms not defined herein are used herein as defined in the Licence Agreement.

IN WITNESS WHEREOF, each party to this agreement has caused it to be executed at [PLACE OF EXECUTION] on the date indicated above.

FIRST PARTY SECOND PARTY

Authorised Signature Authorised Signature

Print Name and Title Print Name and Title

ESCROW AGENT

Authorised Signature

Print Name and Title

**APPENDIX “1”**

**SOURCE CODE ESCROW AGREEMENT**

The following are the Escrow Agent’s fees under this Escrow Agreement:

[TO BE FILLED BY ESCROW AGENT]