



SOFTWARE ESCROW HOLDING AGREEMENT TEMPLATE  
INCLUDING AUTOMATED GIT DEPOSITS  
APRIL 2021 USA VERSION

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For a Word doc version or a proposal, please contact us by email :  
[hello@escrowlondon.com](mailto:hello@escrowlondon.com) or via the contact form on our [website](#)

Escrow London are renowned for ensuring speedy turnaround during legal negotiations. Our in-house legal team review all revised agreements within 24 hours.

We offer agreements under global jurisdictions including USA, Canada, United Kingdom, EU (most countries), Australia, New Zealand, South Africa, Singapore and Hong Kong.

Agreement terms follow on page 2

**Escrow London North America Inc**

<https://www.escrowlondon.com/>

+1-855-944-0651 |

1050 Crown Pointe Parkway, Suite 500,

Atlanta, Ga. 30338,

United States of America

**Holding Agreement  
USA Jurisdiction  
Agreement Number NA**

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

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

**Recitals:**

- A. The Beneficiary has entered into a \_\_\_\_\_ agreement (the “Software Agreement”) with a software developer (Depositor) pursuant to which Depositor has developed for the Beneficiary certain proprietary technology (“Product”).
- B. Continuous availability of the Product is critical to the Beneficiary in the conduct of its business.
- C. Beneficiary wishes to ensure that the Product is always available to them.
- D. Beneficiary owns all the intellectual property rights in the Product.
- E. Escrow London is in the business of providing data protection services by storing, retaining and allowing access to the Beneficiary.

**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**

In this Agreement the following terms shall mean the following:

- 1.1. “Agreement” means this Agreement including all Schedules and Appendices.
- 1.2. “Business Day” means a day, other than a Saturday, Sunday which is not a day on which clearing banks in Atlanta, Georgia are authorized or obligated by law or executive order to close.
- 1.3. “Deposit Materials” means the proprietary technology including source codes, system images, other materials and documentation required to build the Product.
- 1.4. “Depositor” means the software developer that develops the Product on behalf of the Beneficiary as listed in Schedule 3.
- 1.5. “Electronic Upload” means an upload of data through the internet to a Virtual Server.
- 1.6. “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.
- 1.7. “Intellectual Property Rights” means any patents, copyrights, database rights, trademarks, confidential information, domain names and any other similar rights.
- 1.8. “Product” means the proprietary technology and any updates developed for the Beneficiary “
- 1.9. “Source Code” means the computer code that was used to program the Product.
- 1.10. “Verification Test” means the tests performed by Escrow London on the Deposit Materials as agreed between the parties.
- 1.11. “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, Escrow London will request for the Depositor to submit to Escrow London a complete copy of the Deposit Materials by Electronic Upload.
- 2.2. For the initial deposit of Deposit Materials, the Depositor will be requested to supply a deposit form including:
  - 2.2.1. Password and/or Encryption keys to access the Deposit Materials.
  - 2.2.2. Detailed documentation detailing the operating system, hardware, 3rd party software, database schema and software tools required to maintain the Product.
  - 2.2.3. Names and contact details of personnel that maintain the knowledge of the Product.
- 2.3. The Depositor shall submit an updated deposit form in the event of;
  - 2.3.1. Any changes to the password and/or encryption keys required to access the Deposit Materials.

- 2.3.2. Any material changes to the documentation detailing the operating system, hardware, 3rd party software, database schema and software tools required for maintaining the Product.
- 2.3.3. Any material changes to the names and contact details of personnel that maintain the knowledge of the Product.
- 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 repository addresses active for the Source Code used in the Product developed for the Beneficiary.
- 2.5. All parties understand that for 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 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. Beneficiary represents and warrants to Escrow London that it owns the Intellectual Property Rights in the Product.
- 2.8. Escrow London shall have no obligation to either party with respect to the preparation, accuracy, execution or delivery of the Deposit Materials.
- 2.9. The Beneficiary grants Escrow London the rights to upload the Deposit Materials onto a Virtual Server to perform Verification Tests and File Integrity Tests.
- 2.10. Escrow London shall perform Verification Tests of the Deposit Materials according to additional services ordered by the Beneficiary to verify the existence and legibility of the Deposit Materials as detailed in the Escrow Deposit Form. Escrow London will invoice the Beneficiary according to the fees in Schedule 1.
- 2.11. In the event that a Verification Test is performed, Escrow London will provide a Verification Report to the Beneficiary following the Verification Test.
- 2.12. 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.

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

- 3.1. Escrow London shall act as custodian of the Deposit Materials until the escrow is terminated pursuant to Section 6 of this Agreement.
- 3.2. The Beneficiary shall remain at all times the sole 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 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 Beneficiary, 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;
- 3.4. Escrow London's sole responsibility 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. RELEASE OF DEPOSIT MATERIALS**

- 4.1. Beneficiary may request to receive the Deposit Materials from Escrow London at any time and for any reason.
- 4.2. 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. INDEMNIFICATION; LIABILITY**

- 5.1. Beneficiary 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:

- 5.1.1. 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 Software Agreement; and
- 5.1.2. 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").
- 5.2. 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.
- 5.3. 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;
- 5.4. Nothing in this agreement shall limit or exclude any party's liability with respect to liability for death or personal injury caused by negligence.

## **6. TERMINATION**

- 6.1. This Agreement starts on the date of execution and continues for 12 months, being the Initial Term. Thereafter, it shall renew automatically every year for a period of additional 12 months, unless (i) any party notifies the other in writing at least 60 days prior to the conclusion of the then 12 months period of its desire to terminate this Agreement, or (ii) both parties agree in writing to terminate this Agreement.
- 6.2. For 60 days following the termination of this Agreement, Escrow London will make the Deposit Materials then in escrow available for download from the Virtual Server of Escrow London by the Beneficiary 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 destroy all Deposit Materials then in escrow.
- 6.3. The provisions of Sections 1, 5, 8, through 11 shall survive the termination or expiration of this Agreement.

## **7. FEES**

- 7.1. 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.
- 7.2. 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.

## **8. FORCE MAJURE**

- 8.1. 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.

## **9. NOTICES**

- 9.1. 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.

## 10. MISCELLANEOUS

- 10.1. 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.
- 10.2. 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.
- 10.3. 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.
- 10.4. 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.
- 10.5. 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.
- 10.6. This Agreement shall be exclusively governed by and construed in accordance with the laws of the State of Georgia without regard to conflict of laws principles. 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 Atlanta, Georgia, and the parties hereto irrevocably submit to the jurisdiction of such courts for such purposes.
- 10.7. Depositor and Beneficiary are responsible for and warrant, to the extent of their individual actions or omissions, compliance with all applicable laws, rules and regulations, including but not limited to: customs laws; import; export and re-export laws; and government regulations of any country from or to which the Deposit Materials may be delivered in accordance with the provisions of this Agreement. Depositor represents and warrants that the establishment of a deposit account containing ITAR regulated Deposit Materials for the Beneficiary, and Escrow London's subsequent release of such Deposit Materials under the terms of this Agreement will be lawful under any applicable U.S. export control regulations and laws, including ITAR. Conversely, Depositor shall refrain from establishing a deposit account containing ITAR regulated Deposit Materials for the Beneficiary if the release of such Deposit Materials to the Beneficiary, under the terms of this Agreement, would be in violation of any applicable U.S export control regulations and laws, including ITAR. With respect to Deposit Materials containing personal information and data, Depositor agrees to (i) procure all necessary consents in relation to personal information and data; and (ii) otherwise comply with all applicable privacy and data protection laws as they relate to the subject matter of this Agreement. Escrow London is responsible for and warrants, to the extent of its individual actions or omissions, compliance with all applicable laws, rules and regulations to the extent that it is directly regulated by the law, rule or regulation and to the extent that it knows or has been advised that, as a result of this Agreement, its activities are subject to the law, rule or regulation. Notwithstanding anything in this Agreement to the contrary, if an applicable law or regulation exists or should be enacted which is contrary to the obligations imposed upon Escrow London hereunder, and results in the activities contemplated hereunder unlawful, Depositor and/or Beneficiary will notify Escrow London and Escrow London will be relieved of its obligations hereunder unless and until such time as such activity is permitted.

**SIGNATURE PAGE**

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

BENEFICIARY	
Company Name:	
Authorized Representative Name:	
Title:	
Email Address:	
Telephone:	
Signature:	

ESCROW LONDON NORTH AMERICA INC	
Authorized Representative Name:	
Title:	
Date:	
Signature:	

**SCHEDULE 1**

**SCHEDULE OF FEES**

[INSERT AGREED FEES HERE]

**SCHEDULE 2**

<b>No</b>	<b>Product name*</b>
1	

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

**SCHEDULE 3**

<b>Depositor Details</b>	
Company name:	
Product title:	
Address:	
Company representative:	
Email address:	
Telephone:	