

THREE-PARTY ESCROW AGREEMENT

This Technology Escrow Agreement (“Agreement”) among *Name of Escrow Company* (“Escrow Agent”) _____, (“Licensee”) and _____ (“Developer”) is effective on this _____ day of _____, 200___. (the “Effective Date”).

WHEREAS:

- A. Developer has licensed certain technology to Licensee in the form of software object code (the “Software”) pursuant to a license agreement between the parties dated the _____ day of _____, _____ (“License Agreement”). The term “source code” is defined as the Software in source code form, including all relevant documentation and instructions necessary to maintain, duplicate, and compile the source code (the “Source Code”). The Source Code is necessary to maintain and support the Software as defined in the License Agreement. The Source Code and any other components Developer provides which are related to building and maintaining the Software identified on Schedule “B” are hereafter referred to collectively as the deposit materials (“Deposit Materials”).
- B. The purpose of this Agreement is to protect Developer’s ownership and confidentiality of the Deposit Materials and to protect Licensee’s legitimate use of the Deposit Materials in accordance with the License Agreement. Further, this Agreement is intended to provide for certain circumstances under which Developer shall be entitled to receive the Deposit Materials held in escrow by Escrow Agent to continue its legitimate use and support of the Software.
- C. Developer and Licensee hereby designate and appoint Escrow Agent as the escrow agent under this Agreement. Escrow Agent hereby accepts such designation and appointment and agrees to carry out the duties of escrow agent pursuant to the terms and provisions of this Agreement. Escrow Agent is not a party to, and is not bound by, any agreement that might be evidenced by, or might arise out of, any prior or contemporaneous dealings between Developer and Licensee other than as expressly set forth herein.
- D. The parties desire that this Agreement, and any modification, supplement or replacement thereof agreed to by the parties, be an agreement supplementary to the License Agreement pursuant to *The Bankruptcy and Insolvency Act (Canada)*.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound hereby, covenant and agree as follows:

1. Deposit Materials

- (a) *Initial Deposit* - Developer shall submit the initial Deposit Materials to Escrow Agent within sixty (60) days of the Effective Date or sixty (60) days after development of the Deposit Materials is completed. Developer shall complete and deliver with all Deposit Materials a deposit form substantially similar to that set out in Schedule “B”, which shall then become part of this Agreement. Escrow Agent shall notify Licensee within ten (10) days of receipt of the initial Deposit Materials. Escrow Agent has no obligation with respect to the initial Deposit Materials for delivery, functionality, completeness, performance or initial quality.
- (b) *Deposit Material Updates* - Developer shall submit updates to the initial Deposit Materials to Escrow Agent within sixty (60) days of any material modification, upgrade or new release of the Software. Developer shall complete and deliver with all updates to the Deposit Materials an amended Schedule “B” deposit form, which shall additionally become part of this Agreement. Escrow Agent shall notify Licensee within ten (10) days of receipt of updates to the Deposit Materials. Escrow Agent has no obligation with respect to the updates to the Deposit Materials for delivery, functionality, completeness, performance or initial quality.

- (c) *Electronic Deposit* – In the event Developer elects to transfer the Deposit Materials to Escrow Agent through electronic means, whether through a service provided by Escrow Agent or other means, Escrow Agent shall not be liable for transmissions that fail in part or in whole, are lost, or are otherwise compromised during transmission. Furthermore, Escrow Agent shall not be liable for any subsequent services that may or may not be delivered as a result of a failed transfer. Escrow Agent shall not be liable to Developer or Licensee for any encrypted update, or any part thereof, that is transmitted over the Internet to Escrow Agent's FTP Site but is not received in whole or in part, or for which no notification of receipt is given.
- (d) *Duplication of Deposit Materials* - Escrow Agent may duplicate the Deposit Materials only as necessary to comply with the terms of this Agreement. Escrow Agent at its sole discretion may retain a third party for the purpose of duplicating the Deposit Materials only as necessary to comply with the terms herein. All duplication expenses shall be borne by the party requesting duplication.
- (e) *Deposit Material Verification* - Escrow Agent may be retained by separate agreement or by alternative means, to conduct a test of the Deposit Materials to determine the completeness and accuracy of the Deposit Materials. Escrow Agent shall not be liable for any actions taken on the part of any third party with regards to the Deposit Materials.

2. Term & Termination

- (a) *Term of Agreement* – The term of this Agreement shall be for a period of ____ years from the Effective Date. At the end of the initial and each subsequent term, this Agreement shall automatically renew for an additional term of ___ year(s) unless terminated according to the terms herein.
- (b) *Termination of Agreement* – This Agreement may be terminated by written mutual consent of Developer and Licensee provided that one of the following occurs:
 - (i) the License Agreement has been terminated or has expired, or
 - (ii) the Deposit Materials have been released in accordance with the terms hereof.