

## Escrow Agreement

### INSTRUCTIONS

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**This is a model agreement, which means that the parties should adapt it to the circumstances in each case. Changes, if any, shall be made in the Amendment Agreement. The provisions herein are suggested wordings and shall not be regarded as legal advice. Provisions which refer to the role of the Chamber of Commerce as escrow agent, may however not be changed.**

**Words in italics are either reading instructions or alternative conditions. Such conditions, including these instructions shall be deleted before signing the Agreement. For further information, see "Comments on Model Agreement" or please contact the Chamber of Commerce at [escrow@chambers.se](mailto:escrow@chambers.se)**

[\*Insert Company Name, Organization Number/VAT Number, Address], (Licensor)

and

[\*Insert Company Name, Organization Number/VAT Number, Address] (Licensee)

and

The Stockholm Chamber of Commerce (SCC)

agree as follows:

The Licensor and the Licensee hereby commission SCC, and SCC undertakes to hold the Source Code and Documentation in escrow for the purpose of storage in accordance with this Agreement on behalf of the Licensor and the Licensees account.

SCC's assignment and undertaking relates only to hold the Material in its custody in escrow and to release the Material in accordance with this escrow agreement. SCC shall have no right to open or acquaint itself with the contents of the Material, and shall have no duty to verify that the content of the Material is in accordance with any description set out in this Agreement.

## 1 Definitions

"Documentation" means all Documentation related to the Source Code, including [\*Insert documentation];

"License Agreement" means the license agreement entered into by and between the Licensor and the Licensee to license the Product;

"Maintenance Agreement" means the maintenance agreement entered into by and between the Licensor and the Licensee concerning support in relation to the Product;

"Material" means a copy of the Source Code and Documentation;

"Parties" means the Licensor, Licensee and the SCC;

"Product" means [\*Insert name and version of software]; and

"Source Code" means the complete source code of the Product.

## 2 Deposit of Material

The Licensor shall, within thirty (30) days from the day on which all Parties have signed this Agreement, deposit with SCC, one (1) sealed package containing one (1) complete copy of the Source Code together with one (1) complete copy of the Documentation. This Material should be stored on a DVD, unless agreed otherwise. The size of the package must not, unless agreed otherwise, exceed the following size: 35 x 25 x 10 cm.

The Licensor shall state the following on the outside of each package deposited:

- 1) the name of the parties and SCC Escrow Account No of this Agreement (see first page);
- 2) the date of deposit; and
- 3) a declaration of items deposited.

The Chamber of Commerce is only responsible for deposition made in accordance with this agreement and is entitled, at the licensor's risk, to return deposition not made in accordance with this agreement.

## 3 Deposit of Updated Material

The Licensor undertakes, in accordance with the procedure in Clause 2 above, to deposit with SCC a sealed package containing one (1) updated version of the Source Code and Documentation. The deposit shall take place within thirty (30) days from the day on which updates to the Source Code and Documentation have been completed. The updated versions of the Material shall remain in escrow.

## 4 SCC's Obligations

SCC shall:

- 1) within seven (7) days from receipt of Material confirm to the Licensor and the Licensee in writing of the receipt of the Material;
- 2) pursuant to this Agreement, store the deposit with care in Sweden;
- 3) not release the Material otherwise than in accordance with this Agreement;
- 4) not open, take part of, copy or in any way use the Material;
- 5) notify the Licensor and Licensee if, at any time during the currency of this Agreement, the Material has been damaged or destroyed and it has come to SCC's knowledge.

## 5 Licensor's Obligations and Warranties

The Licensor shall:

- 1) be solely responsible for depositing the Material with SCC within the time limits and in the manner set out in this Agreement;

- 2) within fourteen (14) days of the receipt of a notification, in accordance with Clause 4 item 5 above, deposit a replacement copy of the Material, without requiring compensation, with SCC in accordance with this Agreement;
- 3) at any time hold a copy of the latest deposited Source Code including Documentation.

The Licensor warrants that:

- 1) it owns all intellectual property rights in the Material or has license rights to enter into this Agreement;
- 2) the Material comprises complete and accurate copies of the Source Code and the Documentation.

## **6 Licensee's License of the Material**

The Licensee's license to use the Material is regulated in the agreement between the Licensor and the Licensee.

## **7 Confidentiality**

The Parties undertakes to maintain all information and documentation coming into its possession in relation to this Agreement (including the Agreement itself) in strict confidence. Such information and documentation may not be released under any other circumstance than stipulated under this agreement.

Termination of this Agreement will not relieve the Parties of their obligation of confidentiality contained in this Clause 7.

## **8 Release of the Material**

SCC undertakes, in accordance with Clauses 9 and 10 below, to release received Material to the Licensee only if one of the following events occur:

- (a) the Licensor and the Licensee submit a joint written instruction to SCC that the Material should be released to the Licensee; or
- (b) SCC is obliged to release the Material because of court decision or as ordered by the court or by arbitration; or
- (c) the Licensee submits a written request (Request) stating that the Material should be released to the Licensee and that:
  - (1) the Licensor is in default under the License Agreement or the Maintenance Agreement and that such default is of substantial importance to the Licensee and that the default has not been remedied within thirty (30) days of the sending of a notice of such default by the Licensee to the Licensor; or
  - (2) the Licensor has ceased its operations in relation to the Product; or
  - (3) the Licensor has entered into liquidation, suspended its payments or is deemed to be insolvent.

SCC shall, in accordance with Clause 17 below, promptly send a copy of the Request to the Licensor.

Upon SCC's receipt of a written request from the Licensor and Licensee with instructions to release the Material to a third Party for the purpose of verifying its accuracy, completeness, sufficiency and quality, SCC shall immediately release the Material in accordance with such request. Such request and instruction shall contain the receiving third Party's address and contact information.

## **9 Release of the Material in Accordance with Clause 8 a) or b)**

SCC shall, promptly after having received written Instruction, judgment or order in accordance with Clause 8 a) or b) above, release the Material to the Licensee or other in accordance with judgment or order. The Material shall be released in accordance with the final paragraph of Clause 11 below.

## **10 Release of the Material in Accordance with Clause 8 c)**

### *The Licensee's request for release of the Material*

If the Licensee sends a Request to SCC in accordance with Clause 8 c) above, SCC should promptly send a copy of the Request to the Licensor.

### *The Licensor's contestation on releasing the Material*

The Licensor may, within 10 days from the day SCC sent the copy of the Request, in a written statement (Statement) instruct SCC that the Material shall not be released. SCC shall, in accordance with Clause 17 below, promptly send a copy of the Statement to the Licensee. If SCC does not receive such Statement within stated time, the Material shall be released to the Licensee within fifteen (15) days from the day SCC received the Request. The Material should be released in accordance with the final paragraph of Clause 11 below. If SCC receives the Statement within time and the Licensor instructs SCC not to release the Material, SCC shall not release the Material and continue to hold the Material in escrow in accordance with this Agreement.

### *The Licensee's request for arbitration*

The Licensee may, within thirty (30) days from the day SCC sent the copy of the Statement, send a request for arbitration (the Request for Arbitration) in accordance with Clause 16 below to the Licensor. A copy of the Request for Arbitration shall be sent to SCC.

### *Final award*

In the arbitration proceedings the sole question to be determined shall be whether or not one of the events set out in Clause 8 c) above had occurred at the time when the Licensee forwarded its Request to SCC.

Provided that the Licensee proves that it sent the Request for Arbitration to the Licensor within the time period stated above, and that the Arbitral Tribunal decides that one of the events set out in Clause 8 c) above had occurred at the time when the Licensee sent its Request to SCC, SCC shall, on a written request of the Licensee, and after receipt of a written copy of the Arbitral Award, promptly release the Material to the Licensee.

Under any other circumstances, SCC shall continue to hold the Material in escrow in accordance with this Agreement.

### **ALTERNATIVELY**

*Alternatively, the Parties may agree that the Material shall be released to the Licensee, upon payment of a security amount, despite the Licensor's statement that the Material shall not be released. In such case, the Parties may use the following solution:*

#### *Clause 10, Release of the Material in Accordance with Clause 8 c)*

*SCC shall, unless the following condition in this Clause 10 applies, release the Material to the Licensee within fifteen (15) days following SCC's receipt of the Request in accordance with Clause 8 c) above.*

*The Material shall be released in accordance with the final paragraph of Clause 11 below.*

*Should SCC receive from the Licensor, within ten (10) days of having sent a copy of the Request to the Licensor, a written Statement stating that the material shall not be released (Statement), SCC shall not release the Material to the Licensee until SCC receives a written confirmation from [\*Insert the name of a bank] (Bank) stating that an amount of [\*Insert the amount] (Security Amount) has been deposited by the Licensee with the Bank to secure the Licensee's undertaking in accordance with this Clause 10 (Confirmation).*

*The Licensee may only request the Bank to return the Security Amount to the Licensee in accordance with the conditions set out below in this Clause 10.*

*Following receipt of the Confirmation by SCC from the Bank, SCC shall, following a written request by the Licensee, promptly release the Material to the Licensee. SCC shall inform the Licensor that the Material has been released to the Licensee.*

*Unless the Licensor, within thirty (30) days after sending a copy of the Statement to the SCC, sends a request for arbitration (Request for Arbitration) in accordance with Clause 16 below to the Licensee, the Licensee is entitled, after making a request to the Bank, to return the Security amount. In the arbitration proceedings the sole question to be determined shall be whether or not one of the events set out in Clause 8 c) above had occurred at the time when the Licensee forwarded its Request to SCC.*

*If the Arbitral Tribunal decides that one of the events set out in Clause 8 c) above had not occurred at that time, the Licensee shall promptly return the Material to the Licensor and pay to the Licensor a sum equal to the Security Amount, which shall constitute full compensation in respect of the temporary use of or access to the Material by the Licensee. The Licensee shall thereby be entitled, after making a request to the Bank, to return the Security Amount.*

*If the Arbitral Tribunal decides that one of the events set out in Clause 8 c) above had occurred at that time, the Licensee is entitled, after making a request to the Bank, to return the Security Amount.*

## **11 Termination**

This Agreement shall be deemed to be terminated and the Parties shall be fully and finally discharged of its obligation hereunder if any of the following circumstances occur:

- 1) The Licensee submits a written Statement to SCC stating that this Agreement shall be terminated;
- 2) SCC releases the Material in accordance with Clauses 9 or 10 above;
- 3) Thirty (30) days following the sending of a written notice of termination by SCC to the other Parties, stating that any or all fees due to SCC under this Agreement have remained unpaid for a period of ninety (90) days or that the Material has not been placed in escrow by the Licensor in accordance with this Agreement. Such notice of termination does not relieve the Parties from the obligation to pay the fee(s) in accordance with this Agreement;
- 4) The day the Licensor and Licensee declared and expressed in writing to SCC, that the License Agreement and/or the Maintenance Agreement had been terminated or the day it was finally determined that the License Agreement and/or the Maintenance Agreement had been terminated.

Upon termination of this Agreement the Material shall be released to the Licensor, unless otherwise stated upon termination according to (2) or the Licensor and Licensee jointly by writing notifies SCC that the deposit shall be released to other. If SCC has not received such notification within thirty (30) days upon termination of the agreement, the deposited Material shall be released to the Licensor.

SCC shall, at the risk and costs of the addressee, deliver the Material by registered post or by courier. If so agreed with SCC, an authorized representative of the party to whom the Material is to be released may collect the Material at the premises of SCC.

## **12 Fees**

SCC's fee, is set out in the price list available on SCC's website at each given time. The fee includes an initial fee, an annual fee and a fee for Material updates and where appropriate administrative fees. The prices listed are net of Value Added Tax.

The Licensee and Licensor shall be jointly and severally responsible to pay an invoice rendered by SCC in accordance with this Agreement. If the Licensee fails to pay the fee, the Licensee shall be deemed to have forfeited his or her right to request and receive the Material and SCC shall be under no obligation to release the Material to the Licensee under this agreement.

SCC shall send an invoice to the Licensee for: the initial fee on signature of this Agreement and the annual fee at the beginning of the calendar year to which the fee relates and is paid for each commenced year within the term of this agreement. Hence, the Licensor and the Licensee that want to terminate this Agreement in accordance with clause 11 above shall notify SCC before December 31 in order not to be invoiced for the coming year. The fee for Material updates is invoiced at such time as a Material update is deposited and for each commenced year within the term of this agreement. Invoicing shall be made to the Licensee. The invoice shall be paid within thirty (30) days or before the due date indicated on the invoice. If payment, according to such an

invoice, is not received within the specified timeframe the Licensor is entitled to invoice in accordance with the above.

Paid fees are not refundable if not otherwise agreed.

### **13 Limitation of liability of SCC**

SCC shall not be liable to any person or entity whatsoever as regards the content of the Material, including, but not limited to, its accuracy, description, relevance, completeness, merchantable quality, effectiveness or fitness for any purpose.

SCC shall only be liable for direct loss which arises out of or in connection with this Agreement if such loss is caused by SCC's negligence, and SCC's liability for such loss shall be limited to the lesser of a sum equivalent to the total amount paid by the Licensor or the Licensee to SCC under this Agreement. The remuneration shall in no case exceed one hundred thousand (100,000) Swedish Krona.

SCC shall not be liable to the Licensor and/or the Licensee for any special, indirect, incidental or consequential loss or damage, which shall include, but not be limited to, loss of profit, loss of business, loss caused by the Material's unsuitability for any intended purpose, depletion of goodwill or otherwise any other loss whatsoever or howsoever caused, which arises out of or in connection with this Agreement.

No action against SCC arising out of or in connection with this Agreement may be initiated more than one (1) year after the event giving rise to such action took place. The Licensor and/or the Licensee cannot after this time period claim that SCC is responsible for any defaults.

### **14 Indemnification**

The Licensor and the Licensee undertake jointly and severally to indemnify SCC and its employees for all costs and expenses which SCC or its employees may incur or suffer by reason of performance of its duties under this Agreement.

### **15 Entire Agreement and Amendments or Additions**

This Agreement constitutes the entire Agreement between the Parties concerning the subject matter hereof and will supersede all previous communications and undertakings between the Parties. Any amendments and additions to this Agreement must be made in writing and signed by all Parties hereto.

### **16 Settlement of Disputes and Applicable Law**

Any dispute, controversy or claim arising out of, or in connection with, this Agreement or the breach, termination or invalidity thereof, shall be finally settled by arbitration in accordance with the Swedish Arbitration Act. The Arbitral Tribunal shall consist of one (1) arbitrator. The language to be used in the arbitral proceeding shall be English and the place for such proceeding shall be Stockholm.

This Agreement shall be governed by, and construed in accordance with the substantive laws of Sweden without regard to its conflict of laws rules.

### **17 Notices**

All notices, requests, demands or other communication under this Agreement shall be made in writing and shall be deemed to be served as follows:

- 1) If sent by registered post, three (3) days after the day of dispatch;
- 2) If sent by e-mail, on the day of dispatch of the e-mail; or
- 3) If sent by personal delivery, on the day of delivery stated by the courier company.

SCC may act in reliance of any written notice, instruction or request submitted to SCC under this Agreement and signed or presented by a person apparently authorized to act on behalf of the

Licensor or the Licensee. All employees of the Licensor and the Licensee are hereby deemed to have such authority.

## **18 Escrow Agreement**

This Agreement has been prepared in three (3) identical original counterparts of which each Party has received one each.

## **19 Validity**

If any provision of this Agreement is declared or found to be illegal, unenforceable or void, obligations arising under such provision shall be null and void and each provision not so affected shall be enforced to the full extent permitted by law.

## **20 Contact details**

The Licensor and the Licensee shall keep SCC fully and timely informed of their current addresses, telephone numbers, e-mail addresses and who the current contact person is. If required in relation to the performance of any of its obligations under this Agreement, SCC need only attempt to contact the Licensor or the Licensee at the addresses set out in this Agreement or so notified under this Clause 20.

**Licensor:**

Name: \_\_\_\_\_

Organization Number: \_\_\_\_\_

Correspondence Address: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Position: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

Extra Contact Name: \_\_\_\_\_

Email Address: \_\_\_\_\_

**Licensee:**

Name: \_\_\_\_\_

Organization Number: \_\_\_\_\_

Correspondence Address: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Position: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

Extra Contact Name: \_\_\_\_\_

Email Address: \_\_\_\_\_

**SCC:**

Stockholm Chamber of Commerce

Escrow Services

P.O. Box 16050

SE-103 21 Stockholm, Sweden.

Telephone: 46 - 8 - 555 100 00

Email Address: [escrow@chambers.se](mailto:escrow@chambers.se)

Signed on behalf of the Licensor:

Date and Place \_\_\_\_\_  
Signature \_\_\_\_\_  
Name (Printed) \_\_\_\_\_  
Position \_\_\_\_\_

Signed on behalf of the Licensee:

Date and Place \_\_\_\_\_  
Signature \_\_\_\_\_  
Name (Printed) \_\_\_\_\_  
Position \_\_\_\_\_

Signed on behalf of SCC:

Date and Place \_\_\_\_\_  
Signature \_\_\_\_\_  
Name (Printed) \_\_\_\_\_  
Position \_\_\_\_\_