



**SaaS Single Beneficiary Software Escrow Agreement**  
**[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. Continuous availability of such Product and the maintenance thereof are critical to Beneficiary in the conduct of its business.
- C. 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.
- D. 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:

"Access Credentials" means the administrator usernames and passwords that allow full access to the Product deployed on the Virtual Server.

"Agreement" means this Agreement including all Schedules and Appendices.

"Beneficiary" means any organisation, company or individual that has been granted a license to use the Product.

"Business Day" means a day, other than a Saturday, Sunday or public holiday in England, on which clearing banks in the city of London are generally open for business.

"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, 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 virtualised 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. For the initial deposit of Deposit Materials, the Depositor shall supply a deposit form including:
  - 2.3.1. Title name and version of Product.
  - 2.3.2. Password and/or Encryption keys to access the Deposit Materials and Database.
  - 2.3.3. Detailed documentation detailing the operating system, hardware, 3rd party software and software tools required for recompiling the Product.
  - 2.3.4. Names and contact details of personnel that maintain the knowledge of the Product development and structure.
- 2.4. The Depositor shall submit an updated deposit form in the event of;
  - 2.4.1. Any changes to the password and/or encryption keys required to access the Deposit Materials and Database.
  - 2.4.2. Any material changes to the documentation detailing the operating system, hardware, 3rd party software and software tools required for recompiling the Product.
  - 2.4.3. Any material changes to the names and contact details of personnel that maintain the knowledge of the Product development and structure.
- 2.5. Promptly following the date hereof, and in any event within twenty (20) business days following the date hereof, Depositor shall deploy the Product and Databases to the Virtual Server(s) with credentials supplied by Escrow London.
- 2.6. The Depositor shall ensure that the Virtual Server and Product are fully functional and accessible from an external network. If the Product requires any third party licenses or plugins, the Depositor shall install these licenses to confirm that they are functional.
- 2.7. Following the deployment of the Product on the Virtual Server(s), the Depositor shall submit to Escrow London the Access Credentials to the Product and demonstrate the functionality of the Product. Following the deployment of the Product to the Virtual Server(s), Escrow London will maintain the Virtual Server(s) in a dormant state.
- 2.8. Following a new release of the Product, the Depositor will contact Escrow London to receive the log-in credentials to the Virtual Server(s) to deploy the updated version of the Product.
- 2.9. On a scheduled basis as agreed upon by all the parties, the Depositor shall deposit with Escrow London a complete encrypted copy of the Beneficiary Database by Electronic Upload.
- 2.10. All parties understand that for Databases and 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.
- 2.11. 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.
- 2.12. 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.
- 2.13. 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.
- 2.14. Depositor represents and warrants to Beneficiary and Escrow London that it owns the Intellectual Property Rights in the Product.
- 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. Escrow London shall have no obligation to either party with respect to the functionality of the Product deployed on the Virtual Server(s).
- 2.17. 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.
- 2.18. 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.

- 2.19. 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.
- 2.20. 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.
- 2.21. 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.
- 2.22. Notwithstanding any other provisions of this Agreement, Escrow London shall be free to appoint subcontractors for part, but not all, of the delivery of this Agreement. Escrow London shall at all times remain liable for the acts and omissions of any subcontractor appointed and used in the course of this Agreement. As at signature, Escrow London confirms (and the Depositor and Beneficiary agree) that Escrow London may utilise 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 authorised 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 authorised 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 10 Business Days of Beneficiary's written notice to Depositor of such material failure;
  - 4.1.2. Depositor becomes unable to pay its debts or is deemed to be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
  - 4.1.3. Depositor applies for or consents to the appointment of a trustee, receiver or other custodian for Depositor, or makes a general assignment for the benefit of its creditors;
  - 4.1.4. 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 60 days;
  - 4.1.5. Depositor ceases active operation of its business or discontinues the licensing or maintenance of the Deposit Materials in material breach of the SaaS Agreement; or
  - 4.1.6. Depositor assigns 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 courier or registered mail.

- 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 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. Unless Escrow London receives Contrary Instructions (as defined below) by an officer of Depositor within 10 Business Days after sending the Notice, the Virtual Server then in escrow shall be activated and the external IP address to be made available to the Beneficiary by Escrow London within the next 5 Business Days following the end of such ten-day period. Escrow London will maintain the Virtual Server for a period of 90 calendar days following the date of release. Prior to providing access to the Virtual Server, the Beneficiary will be required to pay in advance the release fee in accordance with Schedule 1. At the end of the 90 calendar day period, Escrow London will terminate the Virtual Server(s) and remove all Beneficiary log-in credentials.
- 5.4. "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 courier or registered mail.
- 5.5. 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 then in escrow, but shall continue to store the Deposit Materials until otherwise directed in writing by Depositor and Beneficiary jointly or until resolution of the dispute pursuant to Section 6 of this Agreement.
- 5.6. 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.
- 5.7. Unless otherwise provided in the SaaS Agreement, upon release of the Deposit Materials in accordance with this Agreement, Beneficiary shall have the right to, and Depositor hereby grants the Beneficiary a worldwide, non-exclusive license to, use the Deposit Materials 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.

## **6. DISPUTE RESOLUTION**

- 6.1. A dispute resolution may be requested within 30 Business Days of receipt of any Contrary Instructions pursuant. 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 in London, England.
- 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 Virtual Server 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. 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.
- 7.2. 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;
- 7.3. 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;

- 7.4. 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;
- 7.5. 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;
- 7.6. Depositor and Beneficiary hereby authorise 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.
- 7.7. 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 collected 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 12 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 both parties 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. NOTICES**

11.1. All notices or other communications provided for by this Agreement shall be made in writing and shall be deemed properly delivered when (i) delivered personally, or (ii) seven (7) days after having been mailed to the parties entitled thereto, by registered or certified mail, postage prepaid to the addresses set forth on page 1 or to such other address as any party may designate from time to time by notice, or (iii) 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 address or email address shall be effective only upon actual receipt.

## **12. MISCELLANEOUS**

- 12.1. 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.
- 12.2. 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.
- 12.3. 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.
- 12.4. 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.
- 12.5. 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.
- 12.6. This Agreement shall be exclusively governed by and construed in accordance with English Law without regard to the provisions regarding conflicts of law. Except as provided in Section 6, any dispute arising under or in relation to this Agreement shall be resolved exclusively by the courts of England, 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:	
Mobile Phone:	
Telephone:	
Signature:	
BENEFICIARY	
Company Name:	
Authorised Representative Name:	
Title:	
Email Address:	
Mobile Phone:	
Telephone:	
Signature:	
Escrow London LTD	
Authorised Representative Name:	
Title:	
Date:	
Signature:	

**SCHEDULE 1**

**SCHEDULE OF FEES**

**SCHEDULE 2**

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

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