**Escrow Agreement – deposit of source code**

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| --- | --- |
| **Deposit Number:** | [to be filled in by the Escrow Agent] |
| **Date of the Escrow Agreement:** | [to be filled in by the Escrow Agent] |
| **Licensor:** | **XX** |
| **Licencee:** | **XX** |
| **Escrow Agent:** | **NT Corporate Services AS** |
| Further company information for the Escrow Parties is set out in Annex 1 |

The Depositing Parties has entered into this Escrow Agreement whereas the Licensor has accepted to deposit the Product with the Escrow Agent for the benefit of the Licencee.

# Definitions

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| **Escrow Agent:** | The agent for the depositing of the Source Code Material |
| **Banking Days:**  | Banking days under Norwegian calendar |
| **Depositing Parties:** | The Licensor and the Licensee |
| **Depositing Parties Agreement(s):** | The agreement(s) between the Depositing Parties, regulating licence and maintenance of the Product, as set out in Annex 1.  |
| **Escrow Parties:** | The Depositing Parties and the Escrow Agent |
| **Licensor:** | The seller of the Product |
| **Licencee:** | The buyer of the Product |
| **Product:** | Name of the software as set out in Annex 1 |
| **Source Code Material:** | A copy of the source code of the Product, as set out in Annex 1.  |

# Delivery of the Source Code Material

## The Licensor shall deliver the Source Code Material to the Escrow Agent within [10] Banking Days from the date of the Escrow Agreement.

## The Source Code Material shall be delivered to the Escrow Agent in a way on a media as described in Annex 1.

## The Licensor shall state the following information on the outside of each delivery of the Source Code Material;

1. Deposit number
2. The name of the Depositing Parties
3. The date of delivery
4. Any other information set out in Annex 1

The size of a package must not exceed 31 cm x 23 cm.

## The Escrow Agent shall keep record of the information set out in Clause 2.3.

# Storing of the Source Code Material

## The Escrow Agent shall within 5 Banking Days by receipt of the Source Code Material confirm to the Depositing Parties the deposit and the information received as set out in Clause 2.1.3.

## The Escrow Agent shall keep the Source Code Material in a secure way, taken into account the storage media, damage and access security.

# Upgrading of the Source Code Material

## The Licensor shall deliver to the Escrow Agent an upgraded version of the Source Code Material within [10] Banking Days after a new version of the Product is provided, as set out in Annex 1.

## The Escrow Agent shall upon receipt of upgraded versions of the Source Code Material keep the two latest versions of the Source Code Material stored, and the Escrow Agent shall release to the Licensor older versions of the Source Code Material.

# Release of the Source Code Material

## If one of the Depositing Parties requests the Escrow Agent in writing to release the Source Code Material to the other Depositing Party, the Escrow Agent shall as soon as practicable possible accommodate such release.

## The Licencee may in writing to the Escrow Agent request the Source Code Material to be released to itself if;

1. the Licensor has confirmed such release;
2. the Licensee has cancelled the Depositing Parties Agreement due to material default by the Licensor;
3. the Licensor (a) has terminated its business or (b) declarers that it no longer maintains the Product, or
4. The Licensor goes into liquidation, bankruptcy, opens formal debt negotiations, or declares insolvency.

## The Licensor may in writing to the Escrow Agent request the Source Code Material to be returned to itself if:

1. the Licencee has confirmed such return;
2. the Licensor has cancelled the Depositing Parties Agreement due to material default by the Licencee;
3. the Licensor’s obligation to maintain the Product according to the Depositing Parties Agreement has expired;
4. the Escrow Agreement has been terminated, see also clause 11; or
5. the Licencee goes into bankruptcy proceedings (or similar), and the bankruptcy estate has declared in writing not to enter into the Disposing Parties’ Agreement.

## If the Escrow Agent receives a request according to Clause 5.2 or 5.3, the Escrow Agent shall immediately notify the other Depositing Party about the request.

## If the Escrow Agent receives a protest in writing from the other Depositing Party within 10 Banking Days after the notification set out in Clause 5.4, arguing that the conditions for release are not met, the Escrow Agent shall keep the Source Code Material in escrow until there is a formal and final court ruling or enforcement order authorising the release of the Source Code Material. The Escrow Agent is not a party to such court or enforcement proceedings.

## If the Escrow Agent has not received a protest from the other Depositing Party pursuant to Clause 5.5, the Escrow Agent shall release the Source Code Material to the requesting Depositing Party within 15 Banking Days after the notification is sent from the Escrow Agent according to Clause 5.4.

## The Depositing Parties may at any time jointly instruct the Escrow Agent to release the Source Code Materiel to any other person than described above.

# Use of released Source Code Material

## If the Source Code Material is released to the Licensee according to Clause 5, the Licensee is only entitled to use the Source Code Material to enable the Licensee to continue the maintenance of the Product according to the Depositing Parties Agreement.

## The Licensee shall not make the Source Code Material or the Product available to others than employees and contractors of the Licensee in order to maintain the Product as set out in Clause 6.1.

## The Licensee has no right to market the Product, unless otherwise agreed in the Depositing Parties Agreement.

## When the Licensee’s right to use the Product in accordance with the Depositing Parties Agreement terminates, the Licensee shall immediately return the Source Code Material to the Licensor or destroy the Source Code Material if the Licensor so chooses.

## If the Source Code materials is returned to the Licensor, the Licensor is free to use it at its own discretion, unless otherwise follows by the Depositing Parties Agreement.

# Intellectual property rights

## Except for the Licensee’s right to maintain the Product set out in Clause 6 above, the Escrow Agreement does not influence on the Parties intellectual property rights to any part of the Product or the Source Code Material. The Escrow Agent is an escrow agent only and has no rights to the Product.

# Liabilities

## The role of the Escrow Agent is of mechanical and administrative nature only, and the Escrow Agent has no liability for any content or quality of the Source Code material and shall not make any control or determination of the Source Code Material upon deposit.

## The Escrow Agent shall only be liable for direct losses suffered by the Depositing Parties as a result of the Escrow Agent’s gross negligence in performing its obligations under the Escrow Agreement. The Escrow Agent shall not be liable for any damages in excess of 100 times the annual fee.

## Each of the Depositing Parties are separately indemnify the Escrow Agent for losses suffered as a result of the relevant Depositing Party’s breach of the Escrow Agreement.

# Confidentiality

## The Escrow Agent shall maintain any confidential information and documentation received under the Escrow Agreement and shall not release any such information or documentation except as set out in the Escrow Agreement. .

# Escrow fee

## The Escrow Agent`s fees are set out in Annex 1.

## Payment date for fees are 10 Banking Days after invoice from the Escrow Agent.

## The set-up fee will be invoiced in conjunction with the entering into of the Escrow Agreement. The annual fee shall accrue as from the first anniversary of the Escrow Agreement and shall be invoiced annually in advance at each date corresponding with the calendar date of the Escrow Agreement. Up-date fee will be invoiced in connection with each up-date.

## The Escrow Agent shall have the right to change the price list annually. The yearly fee may be regulated yearly according to the Norwegian Consumer Price Index without further notice.

# Termination of the Escrow Agreement and return of the Source Code Material

## The Escrow Agreement terminates if one of the following incidents occurs:

1. the Licensee in writing to the Escrow Agent terminates the Escrow Agreement;
2. the Source Code Material is released to one of the Depositing Parties according to Clause 5;
3. any escrow fee is not paid within 30 Banking Days after the Escrow Agent has sent a written payment reminder; or
4. the Escrow Agent has terminated the Escrow Agreement with [3] months written notice.

## If the Escrow Agreement is terminated and no release request is made by any of the Depositing Parties, the Escrow Agent shall notify both the Depositing Parties, and if no instruction is received within 10 Banking Days, the Escrow Agent shall return the Source Code Material to the Licensor. Any disputes between the Depositing Parties shall be handled in accordance with Clause 5.5.

## If return of the Source Code Material to the Licensor is not possible without unreasonable efforts from the Escrow Agent, the Escrow Agent may destroy the Source Code Material within 6 months after the notification according to Clause 11.2 above.

## Any return or release of the Source Code Material shall take place as instructed by the relevant Depositing Party and at such Depositing Party’s cost and risk.

## Regardless of any other provisions of this Escrow Agreement, the Escrow Agent is entitled to retain the Source Code Material until any escrow fees has been finally settled.

## The provisions of Clauses 6, 7 and 9 shall maintain even after the Escrow Agreement is terminated.

# Contact information

## The Disposing Parties shall; keep the Escrow Agent informed of its respective contact information as set out in Annex 1 and the Escrow Agent has complied with its obligations under the Escrow Agreement when using such contact information provided by the Depositing Parties.

# Dispute resolution, choice of law and legal venue

## Disputes arising out of or in connection with the Escrow Agreement which are not resolved amicably shall be resolved in accordance with Norwegian law and the Norwegian courts.

## Legal suits shall be served at the Oslo City Court.

This Agreement is executed in three original copies, one for each of the parties.

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| **Licensor** | **Licencee** | **Escrow Agent** |
| Name | Name | Name |
| Signature | Signature | Signature |

**Annex 1**

* + - 1. **The Escrow Parties**

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| --- | --- |
| **Licensor** |  |
| Company no/LEI-code |  |
| **Licencee** |  |
| Company no/LEI-code | NT Corporate Services AS |
| **Escrow Agent** | Nordic Trustee AS |
| Company no/LEI-code | 987 172 932 |
| Addresses and further contact details for the Escrow Parties are set out below |

* + - 1. **The Product**

|  |  |
| --- | --- |
| **Product** | [Product name XX] |
| **Depositing Parties Agreement** | [The agreement (s) between the Licensor and the Licencee dated XX regarding [licence and maintenance] of the Product] |
| **Source Code Material** | [specified] to be deposited as [CD/stick] |
| **Deposit frequency** | [XX] |

* + - 1. **Escrow Agent fee**

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| --- | --- |
| **Invoicing party** | Licencee |
| **Set-up fee** | NOK 10 000 |
| **Annual fee** | NOK 30 000 |
| **Up-date fee** | NOK 5 000 for each up-date |
| Any applicable VAT will be charged additionally  |

* + - 1. **Contact information**

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| **Licensor** |  |
| * Mailing address
 |  |
| * Contact person
 |  |
| * Telephone
 |  |
| * Email
 |  |
| **Licensee** |  |
| * Mailing address
 |  |
| * Contact person
 |  |
| * Telephone
 |  |
| * Email
 |  |
| **Escrow Agent** | **NT Corporate Services AS** |
| * Mailing address
 | P.b. 1470 Vika, N-0116 OSLO |
| * Contact person
 |  |
| * Telephone
 | + 47 22 87 94 00 |
| * Email
 | mail@nordictrustee.com  |