

Escrow Terms of Business

- Material Breach and Audit

1. Important information

- 1.1 These are the terms on which Intellect Enterprises will hold Source and release it to the User in certain circumstances. In conjunction with the completed Order, these terms form the escrow contract between Intellect Enterprises, the Owner and the User. This contract becomes binding on all parties when a completed Order is submitted to Intellect Enterprises enclosing the Source and Intellect Enterprises notifies the Owner and User of its acceptance of the Order.
- 1.2 For convenience, the following words have the following meanings:
- 1.2.1 "Fees" means the fees set out on Intellect Enterprises' escrow website (accessible from www.intellectuk.org);
- 1.2.2 "Intellect Enterprises" means Intellect Enterprises Limited (company number 04396105), whose registered office is at Russell Square House, 10-12 Russell Square, London WC1B 5EE
- 1.2.3 "Order" means the Intellect Enterprises escrow order form;
- 1.2.4 "Owner" and "User" have the meanings set out in the Order;
- 1.2.5 "Release Event" means the circumstances in which Source is released, as defined in 6.1;
- 1.2.6 "Software" means the computer programs and documentation licensed by the Owner to the User, specified in the Order; and
- 1.2.7 "Source" means source code for the Software, and if relevant, programming specifications and design documents, together with updates provided by the Owner from time to time, all stored on magnetic or digital media.

2. Intellect Enterprises' obligations

- 2.1 Intellect Enterprises will:
- 2.1.1 confirm to the User that it holds the Source;
- 2.1.2 keep the most recent version (and on the Owner's request up to two additional historic versions) of the Source in a safe place;
- 2.1.3 return historic versions of the Source to the Owner; and
- 2.1.4 keep the Source confidential and not give it to the User or others except in the case of a Release Event.

3. Owner's obligations

- 3.1 The Owner represents and warrants that:
- 3.1.1 it either owns the intellectual property rights to the Source or is otherwise entitled to enter into this contract and grant the rights herein; and
- 3.1.2 the Source contains all source code, programming specifications and documentation to enable a reasonably skilled programmer to compile the Software.
- 3.2 The Owner shall:
- 3.2.1 deposit the Source with Intellect Enterprises with the submission of the Order (such deposit shall be without charge and shall not constitute an "update");
- 3.2.2 provide updates to the Source in line with making new releases/versions of the Software available to its users;
- 3.2.3 provide Intellect Enterprises with extra copies of the Source on request; and
- 3.2.4 promptly notify Intellect Enterprises of any changes of company name, address, or other information which may reasonably assist Intellect Enterprises in the performance of its obligations under this contract.

4. User's obligations

- 4.1 By giving written notice to the Owner, the User shall be entitled to undertake a reasonable audit at the Owner's premises (during the Owner's ordinary hours of business) of the Owner's compliance with 3.1 prior to any deposit of the Source. If the User reasonably determines that the Owner is non-compliant with 3.1, it shall notify the Owner and Intellect and the Owner shall promptly remedy its non-compliance to the User's reasonable satisfaction. If the Owner is unable to remedy its non-compliance within 30 days (or such other period agreed in writing with the User), such failure shall constitute a material breach of this contract.
- 4.2 The User should police the Owner's compliance with its obligations under this contract, including chasing the Owner for updates to the Source.

5. Payment

- 5.1 The Owner and User (as applicable) shall pay the Fees plus VAT in accordance with the Order. Intellect Enterprises will invoice the applicable party. Payment becomes due upon receipt of Intellect Enterprises' invoice.
- 5.2 If payment is overdue, Intellect Enterprises will notify both parties, and either party may elect to pay on behalf of the other (without prejudice to its right to recover such payment from the other). Failure to pay Intellect Enterprises' invoice within a further 10 day period shall constitute a material breach of contract on the part of the party that is obliged to pay.
- 5.3 Intellect Enterprises may vary the Fees not more than once a year by giving not less than 30 days' notice on its website.

6. Release events

- 6.1 Subject to 6.2, Intellect Enterprises will give the Source to the User if the Owner:
- 6.1.1 ceases doing business; or
- 6.1.2 enters into a voluntary arrangement with its creditors; or

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Intellect Enterprises Limited is an Intellect company. Intellect is the UK trade association for the IT, telecoms and electronics industries. Its members account for over 80% of these markets and include blue-chip multinationals as well as early stage technology companies. These industries together generate around 10% of UK GDP and 15% of UK trade. For more information go to www.intellectuk.org

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- 6.1.3 (being a company) enters into liquidation whether compulsory or voluntary (other than for the purpose of a solvent merger or corporate reorganisation); or
- 6.1.4 (being an individual or partnership) becomes bankrupt; or
- 6.1.5 has a receiver or administrative receiver appointed over all or any part of its assets or undertaking or has a petition presented for an Administration Order; or
- 6.1.6 is unable to pay its debts, as defined by Section 123 of the Insolvency Act 1986; or
- 6.1.7 commits a material breach of its maintenance obligations in relation to the Software and as a result of such a material breach the User lawfully terminates (for breach of contract) the Owner's maintenance obligations in relation to the Software.
- 6.2 The User must notify Intellect Enterprises of a Release Event by providing a statutory declaration confirming that a Release Event has taken place. Intellect Enterprises will send a copy of that statutory declaration to the Owner. Intellect Enterprises will make the Source available for collection by the User after 14 days from sending a copy of the statutory declaration to the Owner, unless within that time the Owner provides a statutory declaration refuting that a Release Event has taken place. If there is a disagreement about whether a Release Event has taken place, the Director General of Intellect shall decide in his/her sole discretion (Intellect Enterprises will procure that Intellect will make that final decision no later than 30 days from sending a copy of the User's statutory declaration to the Owner).
- 6.3 If the Source is delivered to the User following a Release Event:
- 6.3.1 the Owner grants to the User a non-exclusive perpetual personal licence to use the Source for the sole purpose of maintaining and supporting the Software; and
- 6.3.2 the User warrants that it will (i) only use the Source for the sole purpose of maintaining and supporting the Software (without prejudice to its rights under section 50 of Copyright, Designs and Patents Act 1988, as amended), and (ii) respect the Owner's copyright and trade mark notices, and (iii) keep the Source confidential (however, the User may disclose it to a person who is maintaining and supporting the Software for the User), and (iv) cease using and return the Source to the Owner if the licence granted at 6.3.1 is lawfully terminated.
- 7. Termination**
- 7.1 This contract terminates as between Intellect Enterprises, the Owner and the User:
- 7.1.1 when that User collects the Source from Intellect Enterprises following a Release Event; or
- 7.1.2 following expiry or lawful termination of the User's licence of the Software ("Return Event"). The Owner must notify Intellect Enterprises by providing a statutory declaration confirming that a Return Event has occurred. Intellect Enterprises will send a copy of that statutory declaration to the User. Intellect Enterprises will make the Source available for collection by the Owner after 14 days from sending a copy of the statutory declaration to the User, unless within that time the User provides a statutory declaration refuting that a Return Event has taken place. If there is a disagreement about whether a Return Event has taken place, the Director General of Intellect shall decide in his/her sole discretion (Intellect Enterprises will procure that Intellect will make that final decision no later than 60 days from sending a copy of the Owner's statutory declaration to the User); or
- 7.1.3 if the User notifies the Owner and Intellect Enterprises that it no longer needs the escrow service; or
- 7.1.4 if a party commits any material breach of its duties and either of the other two parties subsequently gives written notice to all the parties to terminate this contract immediately; or
- 7.1.5 after not less than 6 months' written notice from Intellect Enterprises to the Owner and all Users that it no longer intends to provide an escrow service (Intellect Enterprises may appoint another organisation to provide the service or ask the Owner and the Users to agree a new escrow agent).
- 8. Limiting liability**
- 8.1 Intellect Enterprises limits its liability to the Owner and User for any breach of contract, negligence, misrepresentation or breach of confidence to £250,000; however, Intellect Enterprises' liability for (1) death and personal injury caused by its negligence; (2) fraud or fraudulent misrepresentation, is unlimited.
- 9. General provisions**
- 9.1 No party shall assign, novate or otherwise transfer this contract or any of its rights and duties hereunder whether in whole or in part without the prior written consent of the others, such consent not to be unreasonably withheld or delayed. Intellect Enterprises is entitled to charge its reasonable legal and administrative expenses to prepare any such assignment or novation.
- 9.2 A person who is not a party to this contract has no right to enforce any term of this contract against Intellect Enterprises, the Owner, or the User, under the Contracts (Rights of Third Parties) Act 1999.
- 9.3 This contract supersedes any prior contracts, arrangements and undertakings between the parties in relation to its subject matter and constitutes the entire contract between the parties relating to that subject matter.
- 9.4 No party shall be liable for any delay or failure to perform its duties caused by any circumstances beyond its reasonable control.
- 9.5 This contract is subject to the laws of England and Wales and the non-exclusive jurisdiction of the UK courts.

For office use only:

**Escrow terms of business
unique reference number:**

| Escrow number | Single/ Multiple/ Staggered (S/M/St) | Standard /Non Standard (S/NS) |
|---------------|---|--|
| | | |

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