



General Terms of Escrow | version: US.SW.2501





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These are the General Terms of Escrow used by Escrow365 Inc., a Florida corporation with its registered office at 701 Brickell Avenue, Suite 1550 Miami, FL 33131 USA (hereinafter referred to as "Escrow365").

Recitals

Whereas,

- I. Depositor has granted Beneficiary a license to utilize the Product.
- II. Depositor has agreed to provide certain services to Beneficiary, which may consist of maintenance, support and providing hosting regarding the Product.
- III. Beneficiary, in certain circumstances where Depositor is unable or fails to provide such maintenance and support services as further described in Section 8, may require access to the Source Code for Continuity Purposes as defined below.
- IV. Depositor may have an agreement with Escrow365 with regard to EscrowReady, for which it may already have uploaded the required Material.

Now therefore, the Parties hereby agree as follows:

Insofar as Depositor has not yet done so, Depositor shall deposit with Escrow365 the Material, which shall be released by Escrow365 to Depositor upon a Release Event (as hereinafter defined).

Section 1 – Definitions

The following words have the following meaning in these General Terms of Escrow:

1.1 Annual Escrow Fee: the fees charged by Escrow365 to Depositor or Beneficiary (as appropriate) for the provision of services to Depositor and Beneficiary as agreed in the Escrow Agreement, covering a period of one year. For the Initial Term, the Annual Escrow Fee is stated in the EPL. For the Renewal Term, the Annual Escrow Fee is calculated in accordance with Section 11.4.

1.2 Authorized Representative: the person duly authorized and designated by each of Depositor and Beneficiary on each applicable EPL (as that term is hereinafter defined) to legally bind such Party and to send instructions to Escrow365 with respect to the Deposit Materials and upon whose instructions Escrow365 shall rely as provided in Section 13.3 below.

1.3 Beneficiary: the legal entity or natural person who is the beneficiary of the Deposits made under the Escrow Agreement, as specified in the applicable Escrow Protection Letter.

1.4 Continuity Purposes: use of the Material strictly for purposes of verification, compilation, execution, maintenance, correction, modification, continuity, and compatibility of the Product within the Beneficiary's computer system operating environment immediately prior to the Release Event, provided that the nature of and restrictions agreed upon in the License Agreement with respect to distribution and sublicensing are observed by the Beneficiary and the License Agreement has not been terminated or expired and such terms of restriction have not survived.

1.5 Deposit: each transfer of the Deposit Material to Escrow365.

1.6 Deposit Material: the Source Code.

1.7 Depositor: the legal entity or natural person who makes Deposits under this Escrow Agreement, as specified in the applicable Escrow Protection Letter.

1.8 End Date: the expiration date of the Escrow Agreement as stated in the Escrow Protection Letter.

1.9 Escrow Agreement:

- the EPL signed between Escrow365, Depositor, and Beneficiary; and
- these General Terms of Escrow; and
- if applicable, additional written agreements among all Parties which incorporate by reference these General Terms of Escrow.

1.10 Escrow Protection Letter (hereinafter referred to as, the "EPL"): the document signed by Escrow365, Depositor and Beneficiary, incorporating these General Terms of Escrow and containing further details of the escrow coverage.

1.11 Escrow Repository Procedure: the applicable method and frequency in which the Material (and any new Deposits of the Material) are provided by Depositor to Escrow365 as well as the method and frequency in which Escrow365 stores the Material, as specified in the EPL.

1.12 EscrowReady: the services provided by Escrow365 to Depositor, enabling Depositor the (technical) interface for making Deposits and concluding Escrow Agreements.

1.13 General Terms of Escrow: these general terms of escrow.

1.14 GIT Repository: the Escrow365 supported GIT repository of Depositor from which the Material can be Deposited.

1.15 Initial Term: the term of the Escrow Agreement as specified in the EPL, which starts on the Intended Start Date and ends on the first-year anniversary thereafter.

1.16 Intellectual Property Rights: all rights of intellectual property, including but not limited to copyrights, trademarks and service marks, patents, sui generis database rights, domain names, rights to know-how and all related rights.

1.17 Intended Start Date: the commencement day of the Escrow Agreement as stated in the EPL, which is the same day as, or later than the Order Date. This date must be within two hundred seventy (270) days from the Order Date.

1.18 License Agreement: the agreement(s) between Depositor and Beneficiary whose terms include one or more licenses to the Product granted to and accepted by the Beneficiary.

1.19 Monitoring: the monitoring service, as provided by Escrow365 if and insofar this is agreed upon in the EPL, in accordance with these General Terms of Escrow and in so far as they can be applied to the Deposit Material.

1.20 MyEscrow365: the online platform environment provided by Escrow365 or its parent or subsidiary (hereinafter referred to as "Affiliate(s)"), under a separate agreement.

1.21 Notice of Non-renewal: a written notice sent to contract@escrow365.com or via the designated feature in MyEscrow365 informing Escrow365 about the termination of the Escrow Agreement on the day the Initial Term or Renewal Term ends. The notice is only valid if confirmed by Escrow365 and visible in the MyEscrow365 Account.

1.22 Order Date: the day on which the EPL has been signed by Beneficiary and Depositor in MyEscrow365.

1.23 Party/Parties: Escrow365, Beneficiary or Depositor; individually or collectively.

1.24 Product: all licensed computer software program(s) as defined in the EPL and as may be further specified in the License Agreement.

1.25 Release Event: any the events indicated in the EPL upon the occurrence of which Escrow365 shall release the Materials to Beneficiary.

1.26 Renewal Term: a term, subsequent to the Initial Term, with a duration of 1 (one) year.

1.27 Secure Deposit via GIT Repository: Deposit of the Material by Escrow365 via a "GIT pull", enabled by Depositor, via the GIT synchronization of the GIT Repository of Depositor with MyEscrow365, as to be established via MyEscrow365 by Depositor.

1.28 Secure Drag & Drop Upload: Deposit by Depositor of the Deposit Material via MyEscrow365 via the available drag & drop feature.

1.29 Secured Online Vaults: the secured online vault, including redundant vaulting if and insofar this is stated in the EPL, in which the Deposit Material, as provided by Depositor, shall be stored by Escrow365.

1.30 Services: the platform services and MyEscrow365, individually and collectively.

1.31 Start Date: the day actual provision of the escrow services by Escrow365 start, which is:

- a. the Intended Start Date; or
- b. a date after the Intended Start Date on which full payment has been received for the Services by Escrow365

whichever occurs later. However, the Start Date shall be no later than ninety (90) days after the Intended Start Date.

1.32 Source Code: the computer programming code of the Product in human readable format, including all documentation, instructions, and all other tangible materials necessary to verify, compile, interpret, install, execute, maintain, and support the Product as well as ensure the Product's compatibility within the Beneficiary's computer system operating environment immediately prior to the Release Event, as may be supplemented from time to time, including revisions and updates to the Product.

Section 2 – Conclusion and Applicability

- 2.1 These General Terms of Escrow apply to every Escrow Protection Letter, which incorporates these General Terms of Escrow by reference.
- 2.2 Modifications and additions to the General Terms of Escrow shall only be effective if they have been agreed in writing among the Parties. In the event of conflict among the different documents that form the Escrow Agreement, the order in which they are listed in the definitions of these General Terms of Escrow shall be the order of precedence.
- 2.3 In order to conclude the Escrow Agreement, Depositor and Beneficiary must each separately procure access to MyEscrow365.
- 2.4 The Escrow Agreement is signed on the Order Date. However, in addition to the obligations of Depositor regarding Deposit and the obligations to pay the fees, the rights and obligations under the Escrow Agreement shall become effective on the actual Start Date.
- 2.5 **Depositor or Beneficiary (whichever is applicable) is responsible for ensuring the invitation for signature is sent to the correct legal entity and signatory for execution of the Escrow Agreement by the other Party. Escrow365 shall not perform any identification checks in relation to this. Depositor and Beneficiary each represent and warrant that the person(s) that have been indicated as signatory/signatories of the Escrow Agreement are duly authorized to sign the Escrow Agreement.**

Section 3 – Deposit of Material

- 3.1 Insofar as Depositor has not already completed a Deposit to Escrow365 (whether or not via EscrowReady), Depositor will transfer the Material to Escrow365 within twenty (20) business days after the Start Date via one of the following two deposit methods, which are available via MyEscrow365, if and insofar as provided in the EPL:
 - (a) Secure Upload via GIT Repository; or
 - (b) Secure Drag & Drop Upload.
- 3.2 All Deposits shall occur in accordance with the relevant provisions regarding rules of use and personal data as contained in Depositor's agreement with Escrow365 for the provision of MyEscrow365.
- 3.3 Depositor will perform additional Deposits of (updated) Deposit Material, or allow Escrow365 to perform 'GIT pulls' with regard to Deposits, insofar agreed, at the frequency as described in the Escrow Repository Procedure.
- 3.4 The Escrow Repository Procedure does not imply the transfer of any Intellectual Property Rights with regard to the Deposit Material to Escrow365. Such rights remain vested with Depositor, its licensor(s) and/or its successor-in-title from time to time.

3.5 Escrow365 will send Depositor and Beneficiary confirmation of receipt of the Deposit Material via MyEscrow365 within five (5) business days following Deposit. Escrow365 will receive and store the Deposit Material in a customer-specific GIT repository managed by Escrow365. After receipt of the Deposit Material, Escrow365 will transfer the (encrypted) Material to its Secured Online Vault with the frequency described in the Escrow Repository Procedure.

3.6 Escrow365 will retain the three (3) latest Deposits in the Secured Online Vault for the duration of the Escrow Agreement. Escrow365 shall be entitled to destroy older Deposits without requiring prior approval from Depositor and/or Beneficiary.

3.7 Depositor grants to and Escrow365 accepts the right and license to make a back-up copy of the Deposit Material, if and when deemed necessary by Escrow365 in its sole discretion.

3.8 Depositor is solely and exclusively responsible for providing an accurate, correct, and complete version of the Deposit Material to Escrow365 and to verify the accuracy, correctness, and completeness of the Deposit Material. Depositor and Beneficiary acknowledge that Escrow365 shall not perform any form of verification of the Deposit Material, and as such, shall not be liable for any deficiencies in the Deposit Material.

3.9 Depositor represents and warrants that the Deposit Material it Deposits does not contain production data or personal data as described in the European Data Protection Regulation. Depositor indemnifies Escrow365 and holds Escrow365 harmless from all third-party claims resulting from violation of the aforementioned representation and warranty.

Section 4 – Description of Escrow365 Services

- 4.1 Escrow365 shall retain the Deposit Material in a safe and secure environment and shall use all reasonable efforts to prevent unauthorized parties from having access to such environment. The Deposit Material shall be stored exclusively in the storage region as indicated on the EPL.
- 4.2 If relevant, Parties agree that if the storage region as applicable in relation to EscrowReady does not align with the storage region that is applicable for this Escrow Agreement, Escrow365, or its Affiliates (insofar applicable), is permitted to relocate the Deposit Material to the storage region applicable to this Escrow Agreement. Alternatively, in such a case, Escrow365 may require Depositor to re-deposit the Deposit Material in order for the Deposit Material to be stored in the correct region.
- 4.3 Escrow365 shall follow the ISO 27001 certified protocols and processes.
- 4.4 Escrow365 shall make no use of the Deposit Material except as required in order to perform its obligations under the Escrow Agreement.
- 4.5 Escrow365 shall release the Deposit Material only in the scenarios and in accordance with the conditions of the Escrow Agreement.
- 4.6 If, despite the security measures and other precautions taken by Escrow365 damage is done to, or loss takes place of, the Deposit Material, Escrow365 shall be obliged to promptly notify Depositor of this fact and Depositor shall be obliged to promptly provide a new copy of the Deposit Material to Escrow365.

Section 5 – Depositor's Representations & Warranties

- 5.1 Depositor represents and warrants that:

- 5.1.1 it possesses all rights and licenses required to transfer the Deposit Material to Escrow365 in accordance with the provisions of the Escrow Agreement and agrees to indemnify and hold harmless Escrow365 from and against any Claim by a third party arising from, relating to, or in connection with the storage, use and/or the release of the Deposit Material in accordance with the Escrow Agreement. "Claim" shall mean all losses, liabilities, damages, claims, taxes, and all related costs and expenses, including, without limitation, reasonable attorneys' fees and costs of investigation, litigation, settlement, judgment, interest, and penalties.
- 5.1.2 the Deposit Material provided to Escrow365 contains an accurate and complete version of the then-current version of the Product licensed to Beneficiary at the time of each Deposit.
- 5.1.3 the Deposit Material provided to Escrow365 is sufficient to enable a software programmer with ordinary skill and experience to carry out maintenance, support, correction, modification, interpretation, and compilation of the Product.
- 5.1.4 the Deposit Material contains no harmful code, viruses, worms, back doors, or similar code.
- 5.1.5 the Deposit Material does not infringe the intellectual property rights of any third-party.

Section 6 – Beneficiary's Representations & Warranties

- 6.1 Beneficiary represents and warrants that:
- 6.1.1 upon release of the Deposit Material to Beneficiary under the Escrow Agreement, the Deposit Material will be used exclusively for Continuity Purposes.
- 6.1.2 upon release of the Deposit Material to Beneficiary, the use of the Deposit Material as well as the continued use of the Product shall be based on the terms and conditions of the License Agreement, excluding any provisions that restrict or prohibit access to and use of the Source Code, the copying, display, correction, maintenance modification, translation, and creation of derivative works of the Source Code and/or Product.
- 6.1.3 in the event that Beneficiary enters into an agreement with a third-party with the for maintenance and support of the Product, Beneficiary will ensure that such third party will act in strict compliance with the provisions of this Section 6.

Section 7 – Monitoring of Deposits

- 7.1 If and insofar as specified in the EPL, the Monitoring of Deposits is included as part of Escrow365's services. Escrow365 shall make a report available within MyEscrow365 to Depositor and Beneficiary, with the interval specified in the EPL, including:
- the amount of GIT synchronizations that were established.
 - the amount of Deposits that have taken place.
 - when the last Deposit has taken place.
- 7.2 In the EPL, Parties may agree upon a different scope of the Monitoring services.
- 7.3 Depositor is and remains responsible for providing the Material Deposit as agreed upon in the Escrow Repository Procedure. In the event that the Monitoring report shows a discrepancy between any of the requirements of the Escrow Repository Procedure and the Material Deposits, Depositor shall be held to do anything that is necessary to comply with the Escrow Repository Procedure. Escrow365 is not responsible or liable for the Deposits, other than providing access to MyEscrow365 and enabling a GIT synchronization with the GIT Repository as mutually agreed upon.

Section 8 – Release

- 8.1 Provided that a valid License Agreement is in force at the time of occurrence, Escrow365 shall release the Material to Beneficiary if any of the following occurs (each a Release Event):
- 8.1.1 Depositor has been declared bankrupt, dissolved or liquidated under the applicable insolvency laws.
- 8.1.2 With the written consent of Depositor or if a court judgment or an administrative order requires surrender.
- In addition to Section 8.1.1 and 8.1.2, if and insofar as declared applicable in the EPL, Escrow365 must release the Material to Beneficiary if one of the following Release Events takes place:
- 8.1.3 Depositor ceases to carry on its business that relates to the License Agreement.
- 8.1.4 The business of Depositor relating to its rights and/or obligations under the License Agreement is transferred entirely or partly to a third party who is unable or unwilling to continue to perform maintenance and/or support of the Product under the License Agreement, and/or is only willing to do so under unreasonable or impracticable commercial terms.
- 8.1.5 Depositor, after having been given duly written notice of default of its obligation to provide maintenance and/or support of the Product, providing a period of a minimum of thirty (30) days to remedy the failure, and Depositor after this period is in default of its obligations under the License Agreement in such a way that its failure jeopardizes the continuity of the use of the Product by Beneficiary.
- 8.1.6 Depositor, as a result of force majeure, is unable to comply with its obligations under the License Agreement for sixty (60) days or more in such a way that its failure to comply jeopardizes the continuity of Beneficiary's use of the Product.
- 8.2 If Beneficiary believes a Release Event has occurred, and requires the release of the Material because of this, Beneficiary shall send a written notice to this effect to Depositor and Escrow365 with reasonable evidence supporting such belief.
- 8.3 Upon receipt of the written notice specified in Section 8.2 above, Escrow365 shall, within five (5) business days, send Depositor a written confirmation of receipt of the request for the release of the Material.
- 8.4 Starting from the date of confirmation by Escrow365, Depositor shall have ten (10) business days to object in writing to the requested release. If Depositor does not object to the release within that period, Escrow365 is entitled to immediately release the Material to Beneficiary. If Depositor is bankrupt, dissolved or liquidated then Depositor shall have no right to object under this Section 8.4.
- 8.5 If Depositor objects in accordance with Section 8.4, Escrow365 will suspend the release of the Deposit Material to Beneficiary. Depositor and Beneficiary shall immediately submit the request of whether the Beneficiary has the right to obtain the Deposit Material to an independent third-party arbitrator or court, as specified in the EPL. The decision of the third party shall be final and binding on all parties and shall not be subject to appeal.
- 8.6 Upon release of the Deposit Material under the Escrow Agreement, Depositor grants Beneficiary the irrevocable, world-wide, perpetual, personal, non-transferable, non-exclusive right to use the Deposit Material for Continuity Purposes and for the use thereof only in connection with the internal business of Beneficiary.

Section 9 – Confidentiality

- 9.1 Each Party will maintain all strict confidentiality with regard to information and documentation coming into its possession under the Escrow Agreement and will not disclose or release such information or documentation other than in accordance with the Escrow Agreement, provided such information is marked as confidential or that its confidential nature follows reasonably from its context and contents. Deposited Material shall at all times be considered confidential information.
- 9.2 The obligation as included in the previous paragraph does not apply to information that:
- is or becomes publicly known other than any breach of a receiving Party.
 - was in the receiving Party's lawful possession before disclosure.
 - becomes available to the receiving Party on a non-confidential basis from a source other than the disclosing Party not under obligation to keep such information confidential; or
 - is developed independently by the receiving Party.
- 9.3 In the event that a receiving Party becomes legally compelled to disclose any information for which the obligations as included in Section 9.1 apply, such receiving Party will provide the disclosing Party with prompt written notice so that disclosing Party may seek a protective order or other appropriate remedy and/or waive compliance with the confidentiality provisions of the Escrow Agreement.
- 9.4 Termination of the Escrow Agreement will not relieve any party or its employees from the obligation of confidentiality as agreed upon in the Escrow Agreement.

Section 10 – Warranty, Disclaimer of Warranties; Limitation of Liability, Damages, Causes of Action; Indemnification

- 10.1 Limited Warranty: Escrow365 warrants that the Services will be provided in substantial conformity with the description of such Services as provided in the Escrow Agreement and that the Services will be performed in a workmanlike manner. For any breach of such warranty, Escrow365's entire liability and Depositor's and Beneficiary's sole and exclusive remedy is at Escrow365's option, either (i) to exercise reasonable efforts to correct such non-conformity in a manner determined by Escrow365, or (ii) substitute or reperform the Services containing the non-conformity, or (iii) refund, pro-rata the fees received by Escrow365 for the Services containing the substantial non-conformity.
- 10.2 **DISCLAIMER OF WARRANTIES: EXCEPT AS EXPRESSLY PROVIDED IN THE ESCROW AGREEMENT, ESCROW365 DISCLAIMS ALL WARRANTIES EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY LAW WITH REGARD TO ANY AND ALL SERVICES WHICH MAY BE PROVIDED PURSUANT TO THE ESCROW AGREEMENT, NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE. THE PARTIES RECOGNIZE AND ACKNOWLEDGE THAT THIS DISCLAIMER OF WARRANTIES IS BARGAINED FOR IN EXCHANGE FOR CONSIDERATION.**
- 10.3 Limitation of Liability: The liability of Escrow365, its directors, officers, employees, and agents towards Depositor and Beneficiary individually, for loss, injury, cause of action (whether in contract, tort (including negligence) or otherwise), liability, or damage of any kind with respect to the Services or otherwise under the Escrow Agreement, as the case may be, shall, in total, be limited to the amount based on the agreed coverage as indicated in the EPL, in which context:
- "Basic Coverage" means ten times (10x) times the Annual Escrow Fee as indicated in the EPL.

- "Increased Coverage" means one hundred times (100x) the Annual Escrow Fee as indicated in the EPL.
- "Max Coverage" means \$500,000 (five hundred thousand US dollars).

Without limiting the generality of the foregoing, Escrow365 shall in no event be liable for any loss of business, lost profits, lost data, or failure of security resulting in any way from the Depositor's or Beneficiary's use of the Services, without limitation, any errors or omissions, any content, any delay or failure of performance, data loss, security breaches, scheduled or unscheduled, downtime, any data/loss of files caused by delays, non-deliveries or wrong deliveries, accuracy or quality of information accessed through the Services, or the unavailability or interruption of the Services caused by Escrow365, the Depositor, Beneficiary, any third party agent of any of the Parties, an act of God, or power grid failure, or otherwise.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE ESCROW AGREEMENT, ESCROW365 SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES OF ANY KIND WHATSOEVER, WHETHER OR NOT FORESEEABLE (INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS, LOSS OF SAVINGS, BUSINESS INTERRUPTION, AND LEGAL FEES) IN ANY WAY DUE TO, RESULTING FROM, OR ARISING IN CONNECTION WITH THE FOREGOING, REGARDLESS OF ANY NEGLIGENCE OR FOR ANY CAUSE OF ACTION WHATSOEVER AND REGARDLESS OF THE FORM OF THE ACTION, EVEN IF ESCROW365 HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES.

- 10.4 Escrow365 shall not be responsible for errors, if any, with respect to the completeness, accuracy or correctness of the Deposit Material insofar as such errors are attributable to Depositor.
- 10.5 The liability of Escrow365 due to an attributable failure in the performance of its obligations under the Escrow Agreement only arises if a Party gives Escrow365 immediate and proper written notice of default, and is provided with a reasonable amount of time to remedy the failure, and Escrow365 continues to attributable fail in the performance of its obligations after that term. The notice of default must contain as detailed a description as possible of the failure, so that Escrow365 is given sufficient detail to enable it to respond timely and adequately.
- 10.6 Any limitation of liability shall not apply in case of gross negligence or willful misconduct by Escrow365, or other types of damage for which it is unlawful to limit or exclude liability.
- 10.7 **NO ACTION AGAINST ESCROW 365 AND/OR ANY OF ITS DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS, REGARDLESS OF FORM (INCLUDING NEGLIGENCE), ARISING OUT OF ANY CLAIMED BREACH OF THE ESCROW AGREEMENT, USE OF THE SERVICES, OR IN ANY OTHER WAY RELATED TO THE ESCROW AGREEMENT AS OUTLINED ABOVE MAY BE BROUGHT BY THE BENEFICIARY, DEPOSITOR, OR BOTH, MORE THAN ONE YEAR AFTER THE CAUSE OF ACTION HAS ARISEN.**
- 10.8 Depositor and Beneficiary, jointly and severally indemnify and hold harmless Escrow365 and its officers, directors, shareholders, employees, agents, and contractors from and against any and all Claims arising from, relating to, or in connection with a breach by either Depositor or Beneficiary of their respective representations and warranties.

Section 11 – Fees and Payment

- 11.1 For the services provided by Escrow365 under the Escrow Agreement, Escrow365 will receive a fee from Depositor and/or Beneficiary, as specified in the EPL.
- 11.2 All fees are to be paid in advance, unless indicated otherwise. Escrow365 is entitled to invoice digitally, including via MyEscrow365.

11.3 The payment term of an invoice is thirty (30) days from the date of the invoice, unless a different payment term is included on the invoice.

11.4 The Annual Escrow Fee for the Renewal Term is based on the fees paid for the Initial Term prorated to a period of one year. In addition, Escrow365 is entitled to adjust the Annual Escrow Fee based on the U.S. Consumer Price Index from the last full calendar year but never more than 5% per year and never more than once per year.

If this fee differs from the standard rates for a similar package with a one-year term as published on MyEscrow365 on the day the Renewal Term starts, Escrow365 will charge the fee which is the lowest of the two.

The Party responsible for payment shall automatically be in default, without a notice of default being required, from and after the due date if full payment has not been received by Escrow365. The Party responsible for payment shall be assessed and liable in an amount equal to the maximum statutory simple interest rate as set forth in Florida Statutes section 687.03, on the outstanding amount, as well as any extrajudicial costs, including attorney's fees and costs of execution enforcement of judgment, without a notice of default being required.

Section 12 – Term and Termination

12.1 The Escrow Agreement will be effective from the Intended Start Date for the Initial Term. The escrow services as to be provided to Depositor and Beneficiary shall however only start at the Start Date. For the avoidance of doubt, this means that the agreed upon service term may start at a moment at which the services are not yet being provided.

12.2 After the Initial Term, and after each Renewal Term, the Escrow Agreement shall be tacitly renewed for the Renewal Term, unless Depositor or Beneficiary provide Escrow365 a Notice of Non-renewal at least thirty (30) days before the start of such a Renewal Term.

12.3 The Escrow Agreement may not be terminated except as provided for therein.

12.4 The terms and conditions of the Initial Term will apply to any Renewal Term, unless Escrow365 has provided a notice to Depositor and Beneficiary of any applicable amended terms and conditions at least sixty (60) days before the beginning of each Renewal Term.

12.5 The Escrow Agreement may be terminated by Depositor or Beneficiary, in the event that Escrow365:

- has petitioned for bankruptcy and/or has been declared insolvent; or
- has been dissolved and liquidated or closes down its businesses; or
- is in material breach of the Escrow Agreement and such breach is not resolved within twenty (20) business days after receipt of written notice, including reasonable detail, of such breach.

12.6 Beneficiary may terminate the Escrow Agreement prior to its expiration by giving written notice of termination or using the designated feature in MyEscrow365. In such a case, Escrow365 shall provide the Party responsible for payment with pro-rated credit equal to the paid fees for the unexpired term of the Escrow Agreement for which no Services are received as a result of such termination. Such credits are bound to the MyEscrow365 account, are valid for twenty-four (24) months after allocation for any Services of Escrow365 and are not transferable or refundable for money. Service credits may be used for procuring services. The amount due for the Services shall be reduced by the amount of Service credits used.

12.7 Depositor is not entitled to unilaterally terminate the Escrow Agreement prior to its expiration with the exception of Section 12.5.

12.8 After termination as provided in this Section 12, Escrow365 shall destroy all Deposit Material in its possession.

12.9 In the event that the Escrow Agreement has been terminated due to an event as described in Section 12.5, Depositor is obliged to deposit the Deposit Material with another escrow provider, for the benefit of Beneficiary, under terms and conditions similar to those in the Escrow Agreement.

Section 13 – Miscellaneous

13.1 Any reference in the Escrow Agreement to "written", "in writing" or similar, shall be understood to also include email and communications through MyEscrow365, provided that the identity of sender and the integrity of the message can be sufficiently established.

13.2 Depositor and Beneficiary agree the services provided by Escrow365 do not include legal advice, legal service, or any other form of legal consultancy. Except as otherwise agreed upon in the Escrow Agreement, the Service is provided 'as is' without warranty or guarantee.

13.3 Each of Depositor and Beneficiary hereby grant and Escrow365 hereby accepts a non-exclusive, world-wide license to use and display Depositor's and Beneficiary's names and logos for marketing and reference purposes.

13.4 If any provision, or part of a provision, of the Escrow Agreement is found by any court or authority of competent jurisdiction to be illegal, invalid or otherwise unenforceable, that provision or part-provision shall be deemed not to form part of the Escrow Agreement, and the legality, validity or enforceability of the remainder of the provisions of the Agreement shall not be affected, unless otherwise required by operation of applicable law. The Parties shall use all reasonable endeavors to agree within a reasonable time upon any lawful and reasonable variations to the provisions or part-provisions in question which may be necessary in order to achieve, to the greatest extent possible, the same commercial effect as would have been achieved by the provision, or part-provision, in question.

13.5 With the exception of Section 12.4, this Escrow 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.

13.6 This Escrow Agreement, inclusive of all amendments or additions thereto, constitutes the entire agreement and sets forth the entire understanding among the Parties with respect to the subject matter hereof and supersedes all prior agreements, covenants, arrangements and discussions with respect thereto. In the event of an inconsistency between the terms and conditions of the Escrow Agreement and any Schedule now or hereafter appended hereto, the terms of the applicable Schedule shall govern to the extent necessary to remedy such inconsistency.

13.7 Except as expressly provided in the Escrow Agreement, all notices, demands, and other communications under this Agreement shall be in writing and delivered by one of the following methods: (i) hand delivery, (ii) electronic transmission (including via MyEscrow365), or (iii) registered or certified mail, return receipt requested, with postage prepaid. Such notices shall be sent to the recipient's address as specified in the Escrow Protection Letter or as updated in writing from time to time.

All notices shall be effective and deemed to be delivered (x) if mailed, on the fifth business day following such mailing, unless there is an interruption in the mail, in which case it shall be deemed to have been given when received; or (y) if delivered or sent by facsimile, on the business day following the date of dispatch or the date of transmission, as the case may be. Either party may change the address for notice by giving written notice of such change to the other party in the manner provided in this Section.

- 13.8 Depositor and Beneficiary acknowledge and agree that Escrow365 relationship is that of an independent contractor and that nothing contained in the Escrow Agreement shall be deemed or construed as creating a joint venture, partnership, employment, or agency relationship.
- 13.9 The Escrow Agreement may be executed in several counterparts each of which when executed shall be deemed to be an original, and such counterparts shall each constitute one and the same instrument and notwithstanding their date of execution shall be deemed to bear the day and year of the Start Date.
- 13.10 Any waiver of any right or remedy under the Escrow Agreement must be in writing and signed by each party. No delay in exercising any right or remedy shall operate as a waiver of such right or remedy or any other right or remedy. A waiver on one occasion shall not be construed as a waiver of any right or remedy on any future occasion.
- 13.11 No Party to this Agreement shall be liable to the other for any failure or delay in performance by circumstances beyond its reasonable control, including but not limited to, acts of God, earthquake, fire, epidemics, pandemics, riots, acts of terrorism, labor difficulties, or governmental action, provided that the Party seeking to rely on such circumstances gives written notice of such circumstances to the other Parties and uses reasonable efforts to overcome such circumstances.
- 13.12 Each of Beneficiary and Depositor shall ensure the accurate and complete provision of their respective Authorized Representative's identity and contact information with Escrow365. Beneficiary and Depositor each acknowledge and agree that Escrow365 is expressly authorized to rely upon instructions from a Party's Authorized Representative with respect to the release, transfer, return, and/or destruction of the Material Deposit. In all other respects, each of Depositor and Beneficiary hereby expressly authorize Escrow365 to act in reliance upon any direction, instruction, request, or signature which Escrow365 reasonably believes to be purportedly provided by an Authorized Representative, officer, or other employee of a Party. Each of Beneficiary and Depositor acknowledge and agree that in such instances, Escrow365 is not required to undertake any measures to confirm the accuracy or validity of any notice or document which Escrow365 reasonable believes is provided by such representative.
- 13.13 Sections 1, 5, 6, 9,10.2-10.8 inclusive, 13, and 15 shall survive termination of the Escrow Agreement, any General Terms of Escrow, or any EPL.

Section 14 – Assignment

- 14.1 No assignment of the Escrow Agreement by the Depositor or the Beneficiary, or any rights or obligations of Depositor or Beneficiary under this Agreement, is permitted without the express prior written consent of Escrow365, which shall not be unreasonably withheld or delayed. Escrow365 shall have no performance obligations under the Escrow Agreement to recognize or acknowledge any successor or assign of Depositor or Beneficiary unless Escrow365 receives prior unequivocal, conclusive, authoritative, and confirmatory written evidence of assignment and the assign's written acceptance of such assignment, acceptance, and agreement to be bound by the terms of the Escrow Agreement.

Section 15 – Applicable Law; Jurisdiction & Venue

- 15.1 The Escrow Agreement and all disputes arising from or in relation to the Escrow Agreement will be governed by and interpreted under the laws of the State of Florida, excluding its choice of law provision. The Parties agree that the provisions of the United Nations Convention on Contracts for the International Sale of Goods do not apply to the Escrow Agreement.
- 15.2 Except for the procedure for resolving disputes relating to, arising from, or in connection with an objection to release of the Deposit Material as provided in Section 8.5, all other disputes relating to, arising from, or in connection with this Escrow Agreement or any agreements resulting from, will be brought exclusively before a competent court of jurisdiction located only within Miami-Dade County, Florida, USA; and each of Beneficiary and Depositor irrevocably consent to the personal jurisdiction and venue of such courts.
- 15.3 The Escrow Agreement is exclusively for the benefit of the Parties, Affiliates of Escrow365 and, subject to Section 14.1, permitted successors and assigns.

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