

Escrow Terms of Business

- Staggered Release

1. Important information

- 1.1 These are the terms on which Intellect Enterprises will hold Source and release it to the Distributor or User in certain circumstances. In conjunction with the completed Order, these terms form the escrow contract between Intellect Enterprises, the Owner, the Distributor 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, Distributor and User of its acceptance of the Order.
- 1.2 For convenience, the following words have the following meanings:
 - 1.2.1 "Distribution Agreement" means the agreement between the Owner and the Distributor under which the Distributor is granted a right to distribute the Software;
 - 1.2.2 "Fees" means the fees set out on Intellect Enterprises' escrow website (accessible from www.intellectuk.org);
 - 1.2.3 "Insolvent" means (i) ceases doing business; or (ii) enters into a voluntary arrangement with its creditors; or (iii) (being a company) enters into liquidation whether compulsory or voluntary (other than for the purpose of a solvent merger or corporate reorganisation); or (iv) (being an individual or partnership) becomes bankrupt; or (v) 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 (vi) is unable to pay its debts, as defined by Section 123 of the Insolvency Act 1986.
 - 1.2.4 "Intellect Enterprises" means Intellect Enterprises Limited (company number 04396105), whose registered office is at Russell Square House, 10-12 Russell Square, London WC1B 5EE;
 - 1.2.5 "Licence Agreement" means the agreement between the Distributor and the User under which the User is granted a licence to use the Software;
 - 1.2.6 "Order" means the Intellect Enterprises escrow order form;
 - 1.2.7 "Owner", "Distributor" and "User" have the meanings set out in the Order;
 - 1.2.8 "Release Event" means the circumstances in which Source is released, as defined in 6 and 7;
 - 1.2.9 "Software" means the computer programs and documentation that are the subject of the Distribution Agreement, and the Licence Agreement, specified in the Order; and
 - 1.2.10 "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 Distributor and 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 and secure 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 Distributor to the User or others except in the case of a Release Event.
 - 2.1.5 notify the Owner if, through use of its reasonable endeavours in the normal course of business, it becomes aware at any time during the term of the Agreement that the copy of the Source and/or Software held by it has been lost, damaged or destroyed

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. Distributor's and User's Obligations

- 4.1 The Distributor and the User accept that Intellect Enterprises will not take steps to check that the Owner is not in breach of its warranties under this contract at the date of this contract. Intellect Enterprises hereby advises the Distributor and the User to take such steps themselves.
- 4.2 The Distributor and User should police the Owner's compliance with its obligations under the contract, including chasing the Owner for updates to the Source.

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5. Payment

- 5.1 The parties shall pay the Fees plus VAT in accordance with the Order. Intellect Enterprises will invoice the applicable party. Payment becomes due 30 days from receipt of Intellect Enterprises' invoice.
- 5.2 If payment is overdue, Intellect Enterprises will notify the parties. Failure to pay Intellect Enterprises' invoice within a further 30 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 (release to Distributor)

- 6.1 By following the procedure at 8, Intellect Enterprises will give the Source to the Distributor if the Owner becomes Insolvent.
- 6.2 If the Source is released to the Distributor under the provisions above the Distributor will be solely responsible for the performance of its own and such of the Owner's obligations contained in this contract as are consistent with the continued operation of this contract.

7. Release Events (release to User)

- 7.1 By following the procedure at 8, Intellect Enterprises will give the Source to the User if:
- 7.1.1 the Distributor fails to apply for release on the occurrence of the Release Events at 6.1 within 30 days of the occurrence of such Release Event; or
- 7.1.2 the Distributor is in material breach of its obligations as to maintenance of the Software under the Licence Agreement, and has failed to remedy such default notified from the User to the Distributor within a reasonable time; or
- 7.1.3 the Distributor becomes Insolvent,

unless:

- 7.1.4 the Owner delivers to Intellect Enterprises a statutory declaration counter-notice stating that the Owner: (i) will assume the rights and obligations of the Distributor directly and shall accordingly enter into a new escrow agreement to reflect the new arrangement within 30 days from the date of such counter-notice; along with any maintenance obligations of the Distributor under any maintenance agreement with the User or under the Licence Agreement on reasonable commercial terms; or (ii) has appointed a new distributor who will assume the rights and obligations of the Distributor under this contract, the Licence Agreement and any maintenance agreement on reasonable commercial terms and enclosed evidence of the same; and
- 7.1.5 a new escrow agreement is completed within 30 days of the date of such notice (except where the failure to complete the escrow agreement is caused directly or indirectly by any default of the User in which case this 30 day period will be extended by the impact of the User's delay).

8. Procedure after a Release Event

- 8.1 The Distributor or User must notify Intellect Enterprises of a Release Event under 6 or 7 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 other parties. Intellect Enterprises will make the Source available for collection by the Distributor or the User (whichever has applied for the Release) after 14 days from sending a copy of the statutory declaration to the other parties, unless within that time the Owner or Distributor provides a statutory declaration counter-notice refuting that a Release Event has taken place. If such a statutory declaration counter-notice is received from either the Owner or Distributor, Intellect Enterprises shall supply a copy of that statutory declaration counter-notice to the other parties.
- 8.2 In the event of any dispute as to the occurrence of any of the Release Events, the Director General of Intellect shall decide in his/her sole discretion whether a Release Event has taken place (Intellect Enterprises will procure that Intellect will make that final decision no later than 30 days from sending a copy of the statutory declaration counter-notice to the other parties).

9. Obligations following a Release Event

- 9.1 If the Source is delivered to the Distributor or the User following a Release Event:
- 9.1.1 the Owner grants to the Distributor or the User a non-exclusive perpetual personal licence to use the Source for the sole purpose of maintaining and supporting the Software; and
- 9.1.2 the Distributor or 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 Distributor or User may disclose it to a person who is maintaining and supporting the Software for the Distributor or User), and (iv) cease using and return the Source to the Owner if the licence granted at 9.1.1 is lawfully terminated.

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10. Termination

- 10.1 This contract terminates as between Intellect Enterprises, the Owner, the Distributor and the User :
- 10.1.1 when the Distributor or User collects the Source from Intellect Enterprises following a Release Event; or
 - 10.1.2 following expiry or lawful termination of the Licence Agreement ("Return Event"). The Owner or Distributor 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 other parties. 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 other parties, 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 whether such a Return Event has taken place (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 Distributor other parties); or
 - 10.1.3 if the Distributor and User notify the Owner and Intellect Enterprises that they no longer need the escrow service; or
 - 10.1.4 if a party commits any material breach of its duties and any of the other parties subsequently gives written notice to all the parties to terminate this contract immediately; or
 - 10.1.5 after not less than 6 months' written notice from Intellect Enterprises to the Owner, Distributor and User that it no longer intends to provide an escrow service (Intellect Enterprises may appoint another organisation to provide the service or ask the Owner, Distributors and User to agree a new escrow agent).

11. Limiting liability

- 11.1 Intellect Enterprises limits its liability to the Owner, Distributor 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.

12. General provisions

- 12.1 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.
- 12.2 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, Distributor or User, under the Contracts (Rights of Third Parties) Act 1999.
- 12.3 No party shall be liable for any delay or failure to perform its duties caused by any circumstances beyond its reasonable control.
- 12.4 This contract is subject to the laws of England and Wales for the exclusive jurisdiction of the English 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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Staggered Escrow is complicated! This step-by-step guide shows you how and when the Source may be released.

Note: This guide does not form part of the contract. It is provided for illustrative purposes only. References to numbers are clauses in the Intellect Enterprises Terms of Business. Terms in Title Case have special meanings, as set out in the Intellect Enterprises Terms of Business.

1. Intellect Enterprises may release the Source to the Distributor

- (a) There is a Release Event under 6, e.g., the Owner become Insolvent. The Distributor must get the Source Code for the benefit of both itself and the User.
- (b) The Distributor sends a statutory declaration to Intellect Enterprises under 8.1, stating that the Release Event has taken place. Intellect Enterprises circulates this statutory declaration to the other parties, i.e., the Owner and the User.
- (c) The Owner has 14 days from receipt of the Distributor's statutory declaration to make a counter-notice, stating that the alleged Release Event has not occurred. The Owner must send such a counter-notice to Intellect Enterprises, which must circulate it to the other parties.
- (d) If the parties can't agree as to whether a Release Event has taken place, Intellect's Director General shall decide within 30 days under 8.2.
- (e) If a Release Event has occurred, the Owner shall release the Source to the Distributor. The Distributor will have the obligations under 9. The Escrow agreement will automatically terminate on the release of the Source Code (10.1.1).

2. Intellect Enterprises may release the Source to the User

- (a) There is a Release Event under 7, e.g., the Distributor fails to pursue the release of the Source Code when the Owner becomes Insolvent, the Distributor becomes Insolvent, or the Distributor breaches maintenance.
- (b) The User sends a statutory declaration to Intellect Enterprises under 8.1, stating that the Release Event has taken place. Intellect Enterprises circulates this statutory declaration to the other parties, i.e., the Owner and the Distributor.
- (c) The Distributor and Owner have 14 days from receipt of the User's statutory declaration to make a counter-notice, stating that the alleged Release Event has not occurred or has been rectified. The Distributor or Owner must send such a counter-notice to Intellect Enterprises, which must circulate it to the other parties.
- (d) If the parties can't agree as to whether a Release Event has taken place, Intellect's Director General shall decide within 30 days under 8.2.
- (e) If a Release Event has occurred, the Owner has the option (under 7.1.4 – 7.1.5) to assume the rights and obligations of the Distributor, or to appoint a new distributor to fulfil these obligations. The Owner must exercise these options within 30 days, or Intellect Enterprises will release the Source Code to the User. The Owner can choose, of course, not to do either of these things, in which case the Source Code will be released from Intellect Enterprises to the User.
- (f) If the Source Code is released to the User, the User will have the obligations under 9. The Escrow agreement will automatically terminate on the release of the Source Code (10.1.1).

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