



chattan escrow
securing piece of mind

BENEFICIARY NOMINATION FORM

by

ABC (Pty) Ltd
("The Owner")

Registration number			
Physical Address			
Postal Address			
Telephone Number		Fax No.	
Contact Person		Email	
Signature <i>(who warrants that s/he is duly authorised to sign)</i>			
Name			
Designation		Date	

in favour of

XYZ (Pty) Ltd
("the Beneficiary")

Registration number			
Physical Address			
Postal Address			
Telephone Number		Fax No.	
Contact Person		Email	
Signature <i>(who warrants that s/he is duly authorised to sign)</i>			
Name			
Designation		Date	

Pursuant to an escrow agreement ("**the Escrow Agreement**") entered into between the Owner and Chattan Escrow (Pty) Ltd ("**the Escrow Agent**") on**[Date of Escrow Agt]**.....

1. BACKGROUND

- 1.1 In terms of a **[.....]** Agreement entered into between the Owner and the Beneficiary ("**the Main Agreement**"):-
- 1.1.1 the Beneficiary has been granted a conditional right of access to and use of the Source Code of the Software set out in Annexe "**C**" hereto ("**the Software**");
- 1.1.2 the Owner is obliged to place a copy of the Source Code of the Software into escrow.
- 1.2 The Owner has entered into the Escrow Agreement with the Escrow Agent in order to comply with the above obligation.

2. STATUS

- 2.1 This Beneficiary Nomination Form ("**Nomination**") is issued in terms of the Escrow Agreement and is, save as may be expressly provided to the contrary in this Nomination, subject to the terms and conditions of such Escrow Agreement, the terms and conditions of which are hereby incorporated into this Nomination by reference. For the purposes of clarity it is recorded that where a term is defined in this Nomination, such definition shall prevail over any similar definition in the Escrow Agreement.

2.2 Once executed by all parties, the Agreement constituted by this Nomination as read with the Escrow Agreement shall be independent of the Escrow Agreement and same may not be terminated by the Escrow Agent due to a breach thereof by the Owner without the written consent of the Beneficiary.

3. **NOMINATION**

The Owner hereby nominates the Beneficiary as a beneficiary to the Escrow Agreement in respect of the Software.

4. **DURATION**

4.1 This Nomination shall become effective on the date of signature thereof by the party signing last, provided that the Beneficiary shall only become entitled to the benefits conferred therein upon payment of the Fees contemplated in clause 6.

4.2 The agreement constituted hereby shall endure until the last day of **February 2009** ("**Initial Period**"), whereafter it shall be automatically renewed for further periods of 12 (twelve) months, subject to the right of the Beneficiary to terminate this agreement by giving the Escrow Agent and the Owner written notice of termination, such notice to be given not less than 30 (thirty) days prior to the end of the Initial Period, or any subsequent period.

5. **TERMINATION BY ESCROW AGENT**

Should the Beneficiary breach any provision of this Nomination, including without limitation, failing to pay any amount due, and fail to remedy such breach within 7 (seven) days of receipt of written notice from the Escrow Agent calling upon it to do so, the Escrow Agent may terminate this nomination on written notice to the Beneficiary. Such termination shall not *ipso facto* affect the status of the Beneficiary in terms of any other nominations, provided that the Escrow Agent may, in its discretion and in the event of any such termination, terminate any or all of the Beneficiary's other nominations.

6. **FEES**

The Beneficiary shall pay the Escrow Agent the initiation fee and the prorated annual escrow fee contemplated in annexe "A" hereto on the date of signature of this Nomination. All further fees shall be payable as and when same become payable in terms of annexe "A". No refunds are payable by the Escrow Agent should this Agreement be terminated for any reason.

7. **RELEASE EVENTS**

The release events are set out in Annexe "B" hereto.

8. **USE OF SOURCE CODE**

The Beneficiary may only use the Source Code for the purposes contemplated in the Main Agreement.

9. **NOTICES AND DOMICILIUM**

9.1 **Addresses.** The parties select as their respective *domicilia citandi et executandi* the physical addresses set out on the cover sheet and the Escrow Agent chooses its domicilium the physical address set out below. Likewise the parties choose all the addresses set on the cover sheet and below for the purposes of giving or sending any other notice provided for or required hereunder, or such other address, fax number or email address as may be substituted by notice given as herein required.

9.2 **Change of Address.** Any party may by giving written notice to the other parties by hand, data message or by fax change its address details, provided that in respect of its physical address and fax number, the new address or number, as the case may be, shall be in the Republic of South Africa, and provided further that such change shall take effect fourteen 14 (fourteen) days after delivery of such written notice.

10. **PRECEDENCE**

Should there be any conflict between this Beneficiary Nomination Form and the Main Agreement, the provisions of this Beneficiary Nomination Form shall, to the extent only of such conflict, prevail.

11. **CONFIRMATION**

The Escrow Agent, by its signature hereto confirms the nomination of the Beneficiary on the terms and conditions of this Nomination, as read with the Escrow Agreement and accepts all benefits conferred and obligations imposed hereby. It is recorded that by their respective signatures to this Nomination, an agreement with reciprocal rights and obligations comes into effect between the Owner, Beneficiary and the Escrow Agent ("**this Agreement**").



Signature			
Name	John McPherson <i>(who warrants that he is duly authorised to sign)</i>		
Designation	Director	Date	
For and on behalf of Chattan Escrow (Pty) Ltd			
Registration number	2003/003327/07		
Physical Address	Unit 12, 1 Melrose Boulevard, Melrose Arch, Johannesburg		
Postal Address	Postnet Suite 44, Private Bag X1 Melrose Arch, Johannesburg, 2076		
Telephone Number	+2711 214-5970	Fax No.	+2786-674-3127
Contact Person	John McPherson	Email	johnm@chattanescrow.co.za



ANNEXE A - FEES

The following fees shall be payable by the Beneficiary for the Escrow services provided by the Escrow Agent in terms of this Agreement:

Description	Terms	Fee
Initiation Fee	Payable upon signature of the Agreement	R3,250
Annual Fee	Initially prorated for the period from the date of signature to the next 1 March, thereafter payable annually in advance on 1 March each year.	R4,550
Update Fee	Per update after the first update in a year.	R600
Storage Fee	Per annum, per 1000cm ³ if the source code media exceeds 1000cm ³	R600
Release Fee	Where the Escrow Package is released to a Beneficiary (per Beneficiary).	R6,000
Inspections	Hourly rate, subject to a minimum of 1 (one) hour	R900

- ♣ All amounts exclude VAT and reflect the prices up to 28 February **2010**.
- ♣ Prices are subject to annual review on 1 March each year and will be increased to reflect any increases in the Consumer Price Index and the costs of storage.
- ♣ All fees are payable on signature of the Beneficiary Nomination Form and thereafter in accordance with the provisions thereof.
- ♣ The Escrow Agent may withhold any Source Code, documentation or other property of the parties from either or both parties until it has been paid in full for any and all amounts outstanding in respect hereof, whether owed by the Owner or the Beneficiary.



ANNEXE B – BENEFICIARY RELEASE EVENTS

A Beneficiary Release Event shall occur where:

- 1 the Owner
 - 1.1 enters into any composition or arrangement with its creditors, or be wound-up, whether compulsory or voluntarily (other than for the purposes of solvent reconstruction or amalgamation), or has a judicial manager validly appointed over all or any part of its assets or its undertaking, or is the subject of an administration order or some analogous process prevailing in terms of the law of the Main Agreement; or
 - 1.2 transfers or attempts to transfer:-
 - 1.2.1 title to the Software;
 - 1.2.2 a material proportion of its business or assets
without the transferee having previously agreed in writing in a form agreed by the Beneficiary (such agreement not to be unreasonably withheld) to be bound by the terms of this agreement; or
 - 1.3 breaches any term of this agreement and fails to remedy such breach within 14 (fourteen) days of having received written notice from the Escrow Agent calling upon it to do so;
 - 1.4 ceases to trade; or
- 2 the Beneficiary terminates the Main Agreement due to a breach thereof by the Owner.

[confirm the release events]



ANNEXE C – SOFTWARE

Name	Version

