**SIMPLE CODE DEFERENCE AGREEMENT**

**(SCoDA)**

\_\_\_\_\_\_\_\_\_\_\_/\**NAME*\*/ (“***Party A***”) controls the private key uniquely associated with Account Address 0x\_\_\_\_\_\_\_\_/\**ADDRESS*\*/ on the Designated Blockchain. \_\_\_\_\_\_/\**NAME*\*/ (“***Party Z***”) controls the private key uniquely associated with Account Address 0x\_\_\_\_\_\_\_\_/\**ADDRESS*\*/. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby enter into this Simple Code Deference Agreement (this "***Agreement***") as of the Effective Time

**1. Subject Property**

(a) Deposit of Subject Property.

(i) No later than 48 hours after the Effective Time (the “***Deposit Deadline***”) (A) Party A shall cause \_\_\_\_\_\_/\*#\*/ of the Designated Tokens to be Transferred from the Account Address set forth for such Party in the Preamble to the Designated Smart Contract and (B) Party B shall cause \_\_\_\_/\*#\*/ of the Designated Tokens to be Transferred from the Account Address set forth for such Party in the Preamble to the Designated Smart Contract.

(ii) The Designated Tokens required to be deposited into the Designated Smart Contract, together with any Token proceeds thereof, Token earnings thereon or other Token amounts that are received or transmitted by the Designated Smart Contract during the term of this Agreement, are referred to herein as the “***Subject Property***”. Any Subject Property that has been Transferred to a Party by the Designated Smart Contract is referred to herein as such Party’s “***Distributed Subject Property***.”

(b) Conditionality of Agreement on Deposit; Return of Partial Deposit. The deposit of the Designated Tokens by both of the Parties by the Deposit Deadline in accordance with Section 1(a)(i) is a condition precedent to the Parties’ other rights and obligations under this Agreement. If either or both of the Parties fail(s) to comply with Section 1(a)(i), this Agreement, other than Sections 4, 5 and 6, shall automatically and without further action of the Parties be deemed cancelled, void terminated and of no further force or effect. The Parties acknowledge and agree that the Designated Smart Contract has been programmed with the intention that, if either Party fails to comply with Section 1(a)(i), the Designated Smart Contract will promptly Transfer all Designated Tokens that were deposited to the Designated Smart Contract by a Party prior to the Deposit Deadline back to such Party’s Account Address.

**2. Effects of Designated Smart Contract**

(a) General Binding Effect.

(i) *Smart Contract Results Binding.* Subject to Section 1 and Section 2(b): (i) the results of operation of the Smart Contract shall be determinative of the rights and obligations of, and shall be final, binding upon and non-appealable by, each of the Parties with respect to the Subject Property.

(ii) *Smart Contract Trumps Other Contracts.* Except as set forth in Section 2(b), if there is any conflict or inconsistency between: (A) (1) this Agreement or (2) any other Contract between or involving the Parties; and (B) any Contract created or implied by, or embodied in, the machine, assembly or other code, or the results of operation, of the Designated Smart Contract, then the Contract referred to in the preceding clause “(B)” shall prevail over the Contract referred to in the preceding clause “(A)”.

(iii) *Prohibition of Legal Proceedings & Transfers.* Each Party shall not, without the prior written consent of the other Party, directly or indirectly take or attempt to take any of the following actions:

(A) except as set forth in Section 2(b) or Section 4, commence or continue any Legal Proceeding, assert any Claim or enforce any judgment or other Order, in each case, against or involving the other Party, relating to this Agreement, the Designated Smart Contract, the Subject Property or any of the other subject matter of or matters contemplated by this Agreement, including, for the avoidance of doubt, any Legal Proceeding or Order *in rem* pertaining to the Subject Property or any Legal Proceeding or Claim challenging the enforceability of any provision of this Agreement;

(B) convey any of the Subject Property (other than such Party’s Distributed Subject Property) (it being understood that for a Party to “***Convey***” any of the Subject Property means for such Party to or enter into any Contract that may obligate such Party to: (1) create, perfect or enforce any Lien on, (2) pledge, hypothecate, grant an option or derivative security with respect to or (3) convey, sell, transfer or dispose of such Subject Property or any right or interest of a Party to or in such Subject Property; or

(C) cause, encourage or facilitate, a Material Adverse Exception Event.

(b) Exception Handling. Notwithstanding anything to the contrary set forth in Section 2(a), if there is a Material Adverse Exception Event , then the rules and procedures set forth in this clause "(b)" shall determine the rights and obligations of the Parties relating to the Subject Property.

(i) *Exception Notice.* If either Party becomes aware that there is a Material Adverse Exception Event, such Party (the “***Sending Party***”) shall deliver to the other Party (the “***Receiving Party***”) a notice (an “***Exception Notice***”) signed by such Party:

1. certifying that the Sending Party believes in good faith that there is a Material Adverse Exception Event;
2. describing in reasonable detail the events, facts, circumstances and reasons forming the basis of such belief;
3. describing in reasonable detail a proposal by such Party of the actions to be taken, the agreements to be entered into, and the remedies to be sought by the Parties in response to the Material Adverse Exception Event (an “***Exception Handling Proposal***”);
4. including copies of any written evidence or other material written information, and summaries of any other evidence, relevant to, and material for the consideration of, the Material Adverse Exception Event and the other matters referred to in the Exception Notice; and
5. containing a representation by the Sending Party, made to and for the benefit of the Receiving Party with the understanding that the Receiving Party will rely thereon, that, to the Sending Party’s knowledge, the certification and statements made pursuant to the preceding clauses “(A)” and “(B)” are accurate as of the date of the Exception Notice, and, considered collectively, do not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make such statements, in light of the circumstances in which they were made, not misleading.

(ii) *Exception Standstill*. During the period commencing upon the earlier of a Party becoming aware that there is a Material Adverse Exception Event or being delivered an Exception Notice and ending with the Parties entering into an Exception Handling Addendum or receiving a final decision of an arbitrator in accordance with Section 2(b)(iii) (the “***Standstill Period***”), such Party shall: (A) treat all of the Distributed Subject Property of such Party that may have been Transferred to such Party as a result of the Material Adverse Exception Event as if it were Subject Property, including by disregarding the parenthetical exceptions for Distributed Subject Property in Section 2(a)(iii); and (B) deposit and maintain such Distributed Subject Property in a segregated Account Address to be treated, to the extent permitted by applicable Legal Requirements, as a custodial trust held for the benefit of the other Party.

(iii) *Determination of Exception Handling.*

(A) The term “***Exception Handling Addendum***” refers to an addendum to this Agreement signed by the Parties and setting forth the Parties’ agreement on the existence or non-existence of a Material Adverse Exception Event and the actions to be taken, the agreements to be entered into, and the remedies to be sought in response thereto. Each Exception Handling Addendum shall automatically and without further action of the Parties be deemed incorporated into and to form a part of this Agreement.

(B) If the Receiving Party wishes to accept the Exception Handling Proposal in full, then the Receiving Party shall promptly deliver a written notice of such acceptance to the Sending Party and the Parties shall promptly enter into an Exception Handling Addendum reflecting the Exception Handling Proposal.

(C)If the Receiving Party disputes the existence of a Material Adverse Exception Event, or does not wish to accept all or any part of the Exception Handling Proposal, then the Receiving Party shall promptly deliver a written notice of such non-acceptance (an “***Exception Response Notice***”) to the Sending Party. The Exception Response Notice shall include the same categories of information, statements, evidence and representations and warranties as would be required for an Exception Notice, *mutatis mutandis*.

(D) During the continuous 30-day period beginning on the date after the date the notice of non-acceptance is delivered to the Sending Party (the “***Negotiation Period***”), the Parties shall use commercially reasonable efforts to negotiate in good faith to agree upon the existence or non-existence of a Material Adverse Exception Event and, if so agreed, the actions to be taken, the agreements to be entered into and the remedies to be sought by the Parties in response to the Material Adverse Exception Event. If the Parties agree upon such matters during the Negotiation Period, the Parties shall promptly enter into an Exception Handling Addendum reflecting the same.

(E) If the Parties fail to reach an agreement resulting in an Exception Handling Addendum during the Negotiation Period, then either Party may initiate an arbitration action to resolve the issues in accordance with the procedures set forth on Exhibit A (the “***Arbitration Procedures***”). The decision resulting from the Arbitration Procedures shall include, among any other determinations, a determination of the treatment of any Distributed Subject Property and whether to extend, modify or terminate the covenants applying to the Distributed Subject Property during the Standstill Period. The decision resulting from the Arbitration Procedures shall be non-appealable, binding and conclusive upon the Parties. Judgment upon such decision may be entered in any court of competent jurisdiction.

3. **Representations and Warrantie**s. Each Party (as the "***Representing Party***") hereby represents and warrants, to and for the benefit of each other Party, as of the Effective Date, as follows.

(a) Authorization and Enforceability. The Representing Party has all necessary power, authority and capacity to perform all of the Representing Party's obligations under, and to execute and deliver, this Agreement. This Agreement has been duly executed and delivered by the Representing Party and constitutes a legal, valid and binding obligation of the Representing Party, enforceable against the Representing Party in accordance with its terms, subject only to the effect, if any, of (i) applicable bankruptcy, insolvency, moratorium or other similar laws affecting the rights of creditors generally, and (ii) rules of law governing specific performance, injunctive relief and other equitable remedies. If the Representing Party is an entity, then the Representing Party is duly formed, organized, validly existing and in good standing under the laws of the jurisdiction in which it was formed.

(b) No Conflicts or Required Unobtained Consents. The execution and delivery of this Agreement by the Representing Party do not, and the performance of its obligations under this Agreement by the Representing Party will not: (i) conflict with or violate any Legal Requirement or Order applicable to the Representing Party or by which the Representing Party or any of the Representing Party's assets is bound; or (ii) result in or constitute (with or without notice, lapse of time or both) any breach of or default under, or give to any other Person (with or without notice, lapse of time or both) any right of termination, amendment, acceleration or cancellation of, or result (with or without notice, lapse of time or both) in the creation of any Lien on any of the Subject Property (or any right, entitlement or interest of the Representing Party therein) pursuant to any Contract to which the Representing Party is a party or by which the Representing Party or any of the Representing Party's assets is bound. The execution and delivery of this Agreement by the Representing Party do not, and the performance of this Agreement by the Representing Party will not, require any consent, permit or exemption from any governmental authority.

(c) Title. The Representing Party exclusively owns, controls and has good and valid title (free and clear of any Liens) to the number of Designated Tokens required to be deposited into the Designated Smart Contract by the Representing Party pursuant to Section 1(a) and exclusively owns controls, controls and has good and valid title (free and clear of any Liens) the private key for the Account Address set forth for the Representing Party in the Preamble. Without limiting the generality of the foregoing, the Representing Party has not directly or indirectly Conveyed any of the Subject Property.

(d) Reliance on Own Due Diligence; Informed Consent.

(i) The Representing Party has received and carefully reviewed a copy of this Agreement and all code for the Designated Smart Contract sufficiently in advance of signing this Agreement. The Representing Party has been given a full and fair opportunity to: (A) to ask questions of, and to receive answers from, the other Party regarding the subject matter of this Agreement and the Designated Smart Contract and (B) to obtain any additional information that is necessary to evaluate this Agreement and the matters contemplated thereby. The Representing Party is a Person who is, or in connection with this Agreement and the matters contemplated thereby has received the advice of Persons who are, knowledgeable, sophisticated and experienced in making, and qualified to make, evaluations and decisions with respect to the quality, security and intended and expected functionality of the Designated Smart Contract and the other matters contemplated by this Agreement.

(ii) Other than the representations and warranties of the other Party expressly set forth in this Section 3, the Representing Party has not relied on any statement, information, representation or warranty (including oral statements, due diligence presentations, etc.), or any omission of any statement, information, representation or warranty, made by or on behalf of the other Party in determining to enter into or perform this Agreement or otherwise making any evaluation or determination of the Designated Smart Contract or any other matter contemplated by this Agreement. The Representing Party understands that the other Party has not made, and has not authorized any of its representatives to make, any representation, warranty or other statement intended to be relied upon or to give rise to any claim, obligation or liability based on the accuracy or completeness thereof, other than the representations and warranties of such Party expressly set forth in this Section 3.

**4. Indemnification**

(a) From and after the Effective Time, each Party (as such, the “***Indemnifying Party***”) shall indemnify, hold harmless, compensate and reimburse the other Party (as such, the “***Indemnified Party***”) from, against and for all reasonably foreseeable losses, liabilities, damages (whether consequential or otherwise), Claims, fees, lost profits, taxes, reductions in value, interests, costs and expenses arising from (i) any inaccuracy in any of the representations and warranties made by the Indemnifying Party in this Agreement or Exception Notice or Exception Response Notice; or (ii) any breach of any of the covenants or obligations of the Indemnifying Party set forth in this Agreement.

(b) Any claim for by an Indemnified Party pursuant to Section 4(a) shall be brought, negotiated and resolved exclusively in accordance with the procedures set forth in Section 2(b) (including the Arbitration Procedures), *mutatis mutandis*.

(c) This Section 4 shall provide the sole and exclusive remedy of the Indemnified Party for any of the matters described in Section 4(a)(i)-(ii).

**5. Definitions**

###### “**Account Address**” means a public key address on the Designated Blockchain Network that is uniquely associated with a single private key, and at which no smart contract has been deployed.

###### “**Claim**” means any past, present or future dispute, claim, controversy, demand, right, obligation, liability, action or cause of action of any kind or nature.

###### “**Confirmation**” of a transaction shall be deemed to have occurred if and only if such transaction has been recorded in accordance with the Consensus Rules in a valid block whose hashed header is referenced by at least [ten] subsequent valid blocks on the Designated Blockchain.

###### “**Consensus Attack**” means an attack that: (i) is undertaken by or on behalf of a block producer who controls, or group of cooperating block producers who collectively control, a preponderance of the means of block production on the Designated Blockchain Network; and (ii) has the actual or intended effect of: (A) reversing any transaction made to or by the Designated Smart Contract after Confirmation of such transaction, including any “double spend” attack having or intended to have such effect; or (B) preventing inclusion in blocks or Confirmation of any transaction made to or by the Designated Smart Contract, including any “censorship attack,” “transaction withholding attack” or “block withholding attack” having or intended to have such effect.

###### **“Consensus Rules**” means the rules for transaction validity, block validity and determination of the canonical blockchain that are embodied in the Designated Client.

###### “**Contract”** means any: (a) written, oral, implied (by course of performance or otherwise) or other agreement, contract, understanding, arrangement, settlement, instrument, warranty, license, insurance policy, benefit plan or legally binding commitment or undertaking; or (b) any representation, statement, promise, commitment, undertaking, right or obligation that may be enforceable, or become subject to an Order directing performance thereof, based on equitable principles or doctrines such as estoppel, reliance, or quasi-contract.

###### **“Designated Blockchain**” means at any give time, the version of the digital blockchain ledger commonly known as “[Ethereum]” that at least a majority of nodes running the Designated Client recognize as canonical as of such time. For the avoidance of doubt, the “Designated Blockchain” does not refer to the digital blockchain ledger commonly known as “Ethereum Classic” or any other blockchain ledgers from which or to which the Designated Blockchain has been “forked” or “split”.

###### **“Designated Blockchain Network**” means the Ethereum mainnet (networkID:1, chainID:1), as recognized by the Designated Client.

###### “**Designated Client**” means the Official Go Ethereum client available at <https://github.com/ethereum/go-ethereum>[[1]](#footnote-1).[[2]](#footnote-2)

###### *“***Designated Smart Contract**” means the smart contract deployed at address [\_\_\_\_\_\_\_\_\_\_\_\_] on the Designated Blockchain.

###### “**Designated Token**” means any amount equal to or greater than one Wei (i.e., one-quintillionth) of the Token commonly known as “[Ether]” exchanged on the Designated Blockchain.

“**Legal Order”** means any restraining order, preliminary or permanent injunction, stay or other order, writ, injunction, judgment or decree that either: (a) is issued by a court of competent jurisdiction or (b) arises by operation of applicable law as if issued by a court of competent jurisdiction, including, in the case of clause “(b)” an automatic stay imposed by applicable law upon the filing of a petition for bankruptcy.

**“Legal Proceeding**” means any private or governmental action, suit, litigation, arbitration, claim, proceeding (including any civil, criminal, administrative, investigative or appellate proceeding), hearing, inquiry, audit, examination or investigation commenced, brought, conducted or heard by or before, or otherwise involving, any court or other governmental entity or any arbitrator or arbitration panel.

“**Lien**” means any lien, pledge, hypothecation, charge, mortgage, security interest, encumbrance, other possessory interest, conditional sale or other title retention agreement, intangible property right, claim, infringement, option, right of first refusal, preemptive right, exclusive license of intellectual property, community property interest or restriction of any nature (including any restriction on the voting of any security or restriction on the transfer, use or ownership of any security or other asset).

###### “**Material Adverse Exception Event**”[[3]](#footnote-3) means that one or more of the following has occurred, is occurring or would reasonably be expected to occur:

###### (a) a Consensus Attack adversely affecting the results or operations of the Designated Smart Contract;

###### (b) the Designated Smart Contract having become inoperable, inaccessible or unusable, including as the result of any code library or repository incorporated by reference into the Designated Smart Contract or any other smart contract or oracle on which the Designated Smart Contract depends having become inoperable, inaccessible or unusable or having itself suffered a Material Adverse Exception Event, *mutatis mutandis*;

###### (c) a material and adverse effect on the use, functionality or performance of the Designated Smart Contract as the result of any bug, defect or error in the Designated Smart Contract or the triggering, use or exploitation (whether intentional or unintentional) thereof (it being understood that for purposes of this clause “(c)”, a bug, defect or error will be deemed to exist if it results in any allocation or distribution of funds different from [the allocation or distribution of funds described in Section \_\_\_], and such bug, defect or error will be deemed material only if it results in a loss to a party to this Agreement of at least [[$\_\_\_\_]/[or]/[.\_\_% of the relevant funds or portion thereof]]);

###### (d) any unauthorized use of an administrative function or privilege of the Designated Smart Contract, including: (i) any use of any administrative credential, key, password, account or address by a Person who has misappropriated or gained unauthorized access to such administrative credential, key, password, account or address or (ii) any unauthorized use of an administrative function or privilege by an otherwise authorized agent or employee of the Corporation; or

###### (e) the Designated Smart Contract[, any of the parties to this agreement] or the Subject Property is subject to a Legal Order that prohibits the Designated Smart Contract [(or that, if the Designated Smart Contract were a Person, would prohibit the Designated Smart Contract)] from executing any function or operation it would otherwise reasonably be expected to execute.

“**Person”** means any human, robot, bot, artificial intelligence, corporation, partnership, association or other individual or entity recognized as having the status of a person under the law.

“**Token**” means a digital unit that is recognized by the Designated Client on the Designated Blockchain Network as capable of: (a) being uniquely associated with or “owned” by a particular public-key address on the Designated Blockchain Network at each particular block height; and (b) having Transfers of such digital unit recorded on the Designated Blockchain.

“**Transfer**” of a Designated Token to a given address (the “***Receiving Address***”) on the Designated Blockchain Network will be deemed to have occurred if and only if it is recognized by the Designated Client on the Designated Blockchain Network that: (a) there has been duly transmitted to the Designated Blockchain Network a new transfer function transaction that: (i) provides for the reassociation of the Designated Token with the Receiving Address; and (ii) is signed by a private key that is (or a group of private keys that together are) sufficient to authorize the execution of such transfer function; and (b) such transaction has been Confirmed.[[4]](#footnote-4)

**Section 5** **Miscellaneous**

(a) Amendments. Any provision of this Agreement may be amended, waived or modified only upon the written consent of both of the Parties.

(b) Notices. Any notice required or permitted by this Agreement will be deemed sufficient when delivered personally or by overnight courier or sent by email to the relevant address listed on the signature page, or 48 hours after being deposited in the U.S. mail as certified or registered mail with postage prepaid, addressed to the Party to be notified at such Party’s address listed on the signature page, as subsequently modified by written notice.

(c) Assignment. Neither this Agreement nor the rights, obligations or liabilities of either Party hereunder may be assigned or delegated, by operation of law or otherwise, by either Party without the prior written consent of the other Party.

(d) Severability. In the event any one or more of the provisions of this Agreement is for any reason held to be invalid, illegal or unenforceable, in whole or in part or in any respect, or in the event that any one or more of the provisions of this Agreement operate or would prospectively operate to invalidate this Agreement, then and in any such event, such provision(s) only will be deemed null and void and will not affect any other provision of this Agreement and the remaining provisions of this Agreement will remain operative and in full force and effect and will not be affected, prejudiced, or disturbed thereby.

(e) Construction. The Parties hereto agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not be applied in the construction or interpretation of this Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, both written and oral, between the Parties with respect to the subject matter hereof.

(f) Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same instrument and shall become effective when one or more counterparts have been signed by each of the parties hereto and delivered to the other parties hereto; it being understood and agreed that all parties hereto need not sign the same counterpart. The delivery by facsimile, email or other electronic delivery in PDF format of this Agreement with all executed signature pages (in counterparts or otherwise) shall be sufficient to bind the parties hereto to the terms and conditions set forth herein.   
A signature may be electronic, provided that it complies with with the U.S. federal ESIGN Act of 2000. All of the counterparts will together constitute one and the same instrument and each counterpart will constitute an original of this Agreement

(g) Disputes; Mandatory Arbitration. Any Legal Proceeding, Claim or other dispute or controversy arising out of or relating to this Agreement, its enforcement, or the breach thereof shall be finally resolved by binding arbitration in accordance with the Arbitration Procedures; *provided, however*, that either Party may seek injunctive relief in aid of arbitration in order to prevent irreparable harm or preserve the status quo. EACH PARTY HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE DESIGNATED SMART CONTRACT OR THE MATTERS CONTEMPLATED HEREBY OR THE ACTIONS OF SUCH PARTIES IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT HEREOF.

(h) Governing Law. All rights and obligations hereunder will be governed by the laws of the State of Delaware, without regard to the conflicts of law provisions thereof.

1. For very long-term agreements, tying to a specific URL may not be the best idea. But for short-to-medium term agreements it is reasonable and convenient. [↑](#footnote-ref-1)
2. A more “decentralized” approach to this definition would be to say something like that a majority of 2 of 3 popular clients for a given network must converge on a chain. I think in most cases it’s not necessary to get that complicated as each blockchain currently has a clear ‘leading client.’ [↑](#footnote-ref-2)
3. This definition is intended to serve as a narrower version of ‘force majeure’ specific to blockchains. Why narrower? Because a broad force majeure would dramatically undermine the trust-minimization benefits of using a blockchain in the first place. This term is only needed as an ‘escape valve’ in arrangements pursuant to which parties are otherwise deferring to a smart contract to perform their obligations on an automated basis. [↑](#footnote-ref-3)
4. ***Note:*** *Typically the legal effect of the Transfer—i.e., that it qualifies as a transfer of legal title/ownership—should be handled separately. E.g., one could say in the text that “On the Closing Date, Bob shall transfer, assign, convey and bequeath all of Bob’s right, title and interest to and in five of the Designated Tokens, free and clear of all Encumbrances, to Alice, by causing such Designated Tokens to be Transferred to the address [\_\_\_\_\_\_\_\_\_\_\_] on the Designated Blockchain Network.*” *This mirrors traditional transaction contract drafting, which treats the desired legal effect (transfer of ownership—e.g., “Bob shall sell, convey, assign and transfer all of the IP to Alice” or “Bob shall pay Alice $500”) separately from the mechanics of conveyance (“Bob shall deliver the tangible embodiments of the IP to Alice at the FTP address \_\_\_\_” or “Bob shall cause $500 to be transmitted by wire transfer in accordance with the wire transfer instructions set forth below…”)*. [↑](#footnote-ref-4)