

SOFTWARE ESCROW AGREEMENT

As of (“Effective Date”), this Software Escrow Agreement (“Agreement”) is entered into by and between corporation, located at (“Licensor”); corporation, located at a (“insert state of incorporation”); and corporation, located at a (“insert state of incorporation”)

WHEREAS, Licensor has entered into a License Agreement with Licensee (“License Agreement”) in which Licensee has agreed to license to Licensee the License Agreement;

WHEREAS, the License Agreement provides for Licensor to appoint an escrow agent chosen by (“insert part Agent”) which provides for Licensor’s Code for the purposes set forth here

License Agreement) licensed software entitled {insert title of software and (“Software”) for use in accordance with the

Licensee to enter into an Escrow Agreement with (“Escrow Agent”) for the Software. The License Agreement provides that, under circumstances to be determined by the Licensee, Licensee may obtain the escrowed Source Code per the terms and conditions of the License Agreement.

agreed and in accordance with the following:

Escrow Agent for the Software. Licensee’s participation was limited to the following: Licensee may obtain the escrowed Source Code per the terms and conditions of the License Agreement.

of customizations as included by the License Agreement for compiling and understanding of the Software.

2. **Deposit.** Within ninety (90) days of the Effective Date, Licensor shall deliver to the Escrow Agent a complete set of the Source Code to contain a complete set of the Source Code.

3. **Updates.** Licensor agrees to deliver to the Escrow Agent, upon written authorization from Licensor, a package certified by an authorized representative of Licensor to contain all items needed to keep the Source Code current with the then current version of the Software, including customizations, enhancements or updates as included by the License Agreement.

4. **Receipt By Escrow Agent.** Licensor shall issue a receipt for all Source Code received and delivered to the Escrow Agent and forward copies of such receipts and packages to Licensee.

5. **Storage and Inspection of Material.** Licensor shall establish under its control a receptacle for the purpose of storing the Source Code in an appropriate physical facility and shall allow the Licensee to inspect the Source Code (other than the Source Code in accordance with the terms) only upon written authorization from Licensor, and otherwise directed by a final order of a court of competent jurisdiction; provided, however, Licensee shall be entitled to not more than one inspection in any calendar year, and Licensor must be given at least thirty (30) days’ written notice prior to such inspection. Any inspection of the Source Code shall be conducted by the authorized representatives of Licensee, Licensor and the Escrow Agent; provided, however, the Licensee shall not delay the exercise of

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inspection rights hereunder. Access to the Source Code shall be permitted to authorized representatives of Escrow Agent to the extent necessary for Escrow Agent to perform its obligations pursuant to this Agreement.

6. **Records.** Escrow Agent agrees to keep complete written records of the activities undertaken and materials prepared and delivered to Escrow Agent pursuant to this Agreement. Licensor and Licensee shall be entitled at reasonable times, during normal business hours and upon reasonable notice to Escrow Agent during the term of this Agreement, to inspect the records of Escrow Agent with respect to the Source Code. Licensor shall be entitled upon reasonable notice to Escrow Agent and during normal business hours to inspect the facilities of Escrow Agent with respect to the physical location of the Source Code.

7. **Term.** This Agreement shall remain in effect until the expiration of the term specified in the License Agreement. Upon expiration of the term of this Agreement, the portion, if any, of the Source Code not previously withdrawn by Licensee in accordance with the terms of this Agreement shall thereupon terminate.

8. **Default By Licensor.** The following events constitute a default by Licensor which give Licensee the right to receive the Source Code from the Escrow Agent pursuant to the section entitled "Delivery of Source Code to Licensee" (see [Exhibits from list](#)):

- a. Licensor ceases doing business and the business is not continued by another corporation or entity or Licensee for reasonably cause deems unsatisfactory; or
- b. Licensor becomes insolvent or makes an assignment for the benefit of creditors or files for bankruptcy or receivership proceeding or makes an assignment for the benefit of creditors; or
- c. Licensor is in material breach of the License Agreement.

(a) within five (5) business days after receipt of the Source Code from the Escrow Agent in writing that the License Agreement has been terminated.

- b. If Licensor disputes Licensee's claim that a default has occurred or that the default has been cured, then Escrow Agent shall deliver the relevant Source Code to any Licensee or Licensee's designee, an arbitrator, or until Escrow Agent receives a final order of a court of competent jurisdiction, and upon such delivery this Agreement shall terminate with respect to the Source Code so delivered.

10. **Source Code License Grant.**

a. **License Grant for Use of Source Code.** Licensee shall have the right to use, copy, modify, and distribute the Source Code in accordance with the terms of the License Agreement. Licensee shall have the right to use, copy, modify, and distribute the Source Code for internal use only. Licensee shall not use, copy, modify, or distribute the Source Code for sale or for the promotion of any product or service. Licensee shall not use, copy, modify, or distribute the Source Code in a manner that is competitive with the product or service of Licensor. Licensee shall not use, copy, modify, or distribute the Source Code in a manner that is likely to cause damage to Licensor's reputation or to the success of Licensor's business. Licensee shall not use, copy, modify, or distribute the Source Code in a manner that is likely to cause harm to the public. Licensee shall not use, copy, modify, or distribute the Source Code in a manner that is likely to cause harm to the environment. Licensee shall not use, copy, modify, or distribute the Source Code in a manner that is likely to cause harm to the community. Licensee shall not use, copy, modify, or distribute the Source Code in a manner that is likely to cause harm to the world.

b. **Non-Disclosure.** Licensee shall not disclose the Source Code to any third party without the prior written consent of Licensor. Licensee shall not use, copy, modify, or distribute the Source Code in a manner that is likely to cause harm to Licensor's reputation or to the success of Licensor's business. Licensee shall not use, copy, modify, or distribute the Source Code in a manner that is likely to cause harm to the public. Licensee shall not use, copy, modify, or distribute the Source Code in a manner that is likely to cause harm to the environment. Licensee shall not use, copy, modify, or distribute the Source Code in a manner that is likely to cause harm to the community. Licensee shall not use, copy, modify, or distribute the Source Code in a manner that is likely to cause harm to the world.

replaces any prior oral or written communications between the parties regarding Software Escrow.

IN WITNESS WHEREOF, the parties hereto have caused this Software Escrow Agreement to be executed as of the Effective Date.

[Insert name of Licensor]

[Insert name of Licensee]

By:

By:

Name:

Name:

Title:

Title:

Date:

Date:

[Insert name of Escrow Agent]

By:

Name:

Title:

Date:

Exhibit A
Fee Exhibit

(Insert escrow fee information)

