

# SOFTWARE ESCROW AGREEMENT

THIS AGREEMENT made effective as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**BETWEEN:**

[NAME OF ESCROW AGENT]  
[address]  
(the "Escrow Agent")

- and -

[NAME OF SOFTWARE LICENSOR]  
[address]  
(the "Licensor")

- and -

[NAME OF SOFTWARE LICENSEE]  
[address]  
(the "Licensee")

## RECITALS

Whereas, pursuant to a license agreement ("License Agreement") between Licensor and Licensee dated the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (a copy of which is attached hereto and made a part hereof), Licensor has licensed to Licensee certain computer programs (the "Software").

And whereas under the terms of the License Agreement, Licensor has agreed to maintain and support the Software as defined in the License Agreement. The source code ("Source Code") of the Software, documentation and any other components and materials Licensor provides which are related to building and maintaining the Software as more particularly described in Exhibit B (as the same may be modified herein) are hereafter referred to collectively as the "Deposit Materials".

And whereas the uninterrupted availability of the Software is critical to Licensee in the conduct of its business.

And whereas the purpose of this Agreement is to protect Licensor's ownership and confidentiality of the Deposit Materials and to protect Licensee's legitimate use of the Deposit Materials as defined by the License Agreement. Further, this Agreement is intended to provide for certain circumstances under which Licensee shall be entitled to receive the Deposit Materials held in escrow by Escrow Agent to continue its legitimate use and support of the Software.

And whereas Licensee and Licensor hereby designate and appoint Escrow Agent as the escrow agent under this Agreement, and Escrow Agent hereby accepts such designation and appointment and agrees to carry out the duties of escrow agent pursuant to the terms and provisions of this Agreement. Escrow Agent is not a party to, and is not bound by, any agreement that might be evidenced by, or might arise out of, any prior or contemporaneous dealings between Licensor and Licensee other than as expressly set forth herein.

**NOW THEREFORE THIS AGREEMENT WITNESSES** that in consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties hereto, intending to be legally bound hereby, covenant and agree as follows:

## 1. Deposit Materials

1.1 *Initial Deposit.* Licensor shall submit the initial Deposit Materials to Escrow Agent within \_\_\_\_\_ days after development of the Deposit Materials is completed. Licensor shall complete and deliver with all Deposit Materials a deposit form ("Deposit Form") as shown herein as Exhibit C, which shall then become part of this Agreement. Escrow Agent shall notify Licensee in writing within \_\_\_\_ days of receipt of the initial Deposit Materials. Escrow Agent has no obligation with respect to the delivery, functionality, completeness, performance or initial quality of the initial Deposit Materials, or any subsequent Deposit Materials.

1.2 *Deposit Material Updates.* Licensor shall submit updates to the initial Deposit Materials to Escrow Agent within \_\_\_\_\_ days of any material modification, upgrade or new release of the Software. Licensor shall complete and deliver with all updates to the Deposit Materials an amended Deposit Form, each of which shall become part of this Agreement. Escrow Agent shall notify Licensee in writing within \_\_\_\_\_ days of receipt of updates to the Deposit Materials.

1.3 *Electronic Deposit.* In the event Licensor elects to utilise electronic means to transfer the Deposit Materials to Escrow Agent, whether through a service provided by Escrow Agent or other means, Escrow Agent shall not be liable for transmissions that fail in part or in whole, are lost, or are otherwise compromised during transmission. Further, Escrow Agent shall not be liable for any subsequent services that may or may not be delivered as a result of a failed transfer. Escrow Agent shall not be liable to Licensor or Licensee for any encrypted update, or any part thereof, that is transmitted over the Internet to Escrow Agent's FTP Site but is not received in whole or in part, or for which no notification of receipt is given.

1.4 *Duplication of Deposit Materials.* Escrow Agent may duplicate the Deposit Materials only to the extent necessary to comply with the terms of this Agreement. Escrow Agent, in its sole discretion, may retain a third party for the purpose of duplicating the Deposit Materials only to the extent necessary to comply with the terms hereof. All duplication expenses shall be borne by the party requesting duplication.

1.5 *Deposit Material Verification.* Escrow Agent may be retained, by separate agreement or by alternative means, to conduct a test of the Deposit Materials to determine the completeness and accuracy of the Deposit Materials. Escrow Agent shall not be liable for any actions taken on the part of any third party with respect to the Deposit Materials.

## 2. Term & Termination

2.1 *Term of Agreement.* The term of this Agreement shall be for a period of \_\_\_\_ year(s) from the Effective Date. At the end of the initial term and any and all renewals hereof, this Agreement shall automatically renew for an additional \_\_\_\_-year term unless terminated in accordance with the terms herein.

2.2 *Termination by Mutual Consent.* This Agreement may be terminated by written mutual consent of Licensor and Licensee in either of the following events:

- (a) The License Agreement has been terminated or has expired, or
- (b) The Deposit Materials have been released in accordance with the provisions of Section 6.

2.3 *Termination for Non-Payment.* In the event that full payment of all or any portion of the fees due to Escrow Agent under this Agreement have not been received by Escrow Agent within thirty (30) days of the date payment is due, Escrow Agent will notify Licensor and Licensee in writing of the delinquent fees. If the delinquent fees are not received within \_\_\_\_\_ days of delivery of the delinquency notice, Escrow Agent shall have the right to terminate this Agreement and destroy the Deposit Materials.