

EXHIBIT C – ESCROW AGREEMENT

## EscrowTech

### Multiple Beneficiaries – Separated Products

EscrowTech was founded in 1992 with the purpose of providing sound and secure Intellectual Property Protection Services. EscrowTech's legal and technical expertise continues to deliver premium, yet simple and customizable solutions for thousands of clients all over the world.

**Purpose:** This Agreement is an agreement between an Owner and EscrowTech. The "Owner" is the licensor or provider of the Software. "Beneficiaries" can be added to the Agreement and escrow through a registration process. Each "Beneficiary" is a licensee or customer to whom the "Software" is licensed or provided by the Owner. The software products can be separated.

**Fees:** The Fee Schedule is found in Exhibit B of this Agreement. The Annual Fee for a Multiple Beneficiary Escrow is \$1495 per year per Beneficiary.

**Technical Verification:** EscrowTech provides technical verification services for an additional fee. Options and applicable fees are also found in the Fee Schedule in Exhibit B. If verification is required, please choose the desired level of verification by double-clicking the box to the left of the description and clicking "checked". Some Technical Verification levels require an accompanying Technical Verification Addendum and Questionnaire which may be obtained from an EscrowTech representative. Additional options such as EscrowTracker and M-DISC long-term storage media are also available for selection in the Fee Schedule.

#### Instructions for executing this Agreement:

1. Fill out front page of Agreement, including company and contact information and escrow number. If you have not been assigned an escrow number, leave it blank and EscrowTech will insert the number later.
2. On page 10, insert the full legal company name of Owner on the applicable blank lines. Insert name and title of signors.
3. Exhibit A notes:
  - a. Software Products – List the product name(s) that will be registered under the escrow.
  - b. Deposit Materials - Describe the Deposit Materials that will be put into the escrow. Deposit Materials may be limited to source code, or may further include documentation, programming tools, or any other materials.
4. Fees: Choose which party will be responsible for the annual Beneficiary fee by double-clicking the appropriate box and clicking "checked". Choose additional Technical Verification services as needed.
5. Insert any additional contacts in Exhibit C.
6. Changes: EscrowTech must first approve any changes or additions made to the body of the Agreement.
7. Print and sign the Agreement then return a signed copy to an EscrowTech representative. Mail, PDF, or fax is acceptable.

#### Instructions for registering a Beneficiary:

1. Once the Agreement is fully executed, Beneficiaries may be registered to the account using the Beneficiary Registration form.
2. Fill out fields on the front page of the form, including Beneficiary's company and contact information.
3. Release Conditions, Permitted Use, and Termination Conditions are found in Appendix 1 of the Beneficiary Registration Form. These sections may be customized for each Beneficiary.
4. Beneficiary may choose additional Technical Verification options in Appendix 3.
5. Once completed, circulate Beneficiary Registration form for signatures and submit a signed copy to EscrowTech.

***PLEASE DELETE THIS PAGE OF THE AGREEMENT BEFORE EXECUTION***



## Software Escrow Agreement

("Multiple Beneficiaries – Separated Products")

\_\_\_\_\_  
Date of Agreement

\_\_\_\_\_  
Escrow Number MB-SP

\_\_\_\_\_  
EscrowTech International, Inc.

\_\_\_\_\_  
Escrow Agent

\_\_\_\_\_  
3290 West Mayflower Way

\_\_\_\_\_  
Address

\_\_\_\_\_  
Lehi, UT 84043

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
801-852-8202

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
801-852-8203

\_\_\_\_\_  
Facsimile

\_\_\_\_\_  
Owner Company Name

\_\_\_\_\_  
Main Contact

\_\_\_\_\_  
Address Line 1

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
Address Line 2

\_\_\_\_\_  
Facsimile

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
e-mail Address

\_\_\_\_\_  
Country

1. **Software Products, Software and Establishment of Escrow.** Owner owns, or has the right to license or distribute, the computer software products identified in Exhibit A and referred to in this Agreement as the "Software Products." Owner licenses Software Products to its licensees. One, some or all of the Software Products may be licensed to a given licensee. Different combinations of these Software Products may be licensed by Owner to different licensees. These licensees may become Beneficiaries under Section 2 of this Agreement. As applied to a given Beneficiary, the term "Software" shall mean the Software Products licensed by Owner to that Beneficiary pursuant to that Beneficiary's License Agreement (see Section 9) and as identified in the applicable Beneficiary Registration Form, but shall not include any other Software Products. By this

Agreement, Owner establishes an escrow of Deposit Materials for the Software Products (the "Escrow").

2. **Beneficiaries.** Each licensee of any one or more of the Software Products who registers under Section 3 shall be a "Beneficiary."

3. **Registration.** To register a licensee as a Beneficiary with EscrowTech:

(a) Owner and the licensee will complete and execute EscrowTech's then-current Beneficiary Registration Form. The completed Beneficiary Registration Form will identify the Software Products for which the licensee is to be registered as a Beneficiary under this Agreement.

(b) The completed and executed Beneficiary Registration Form will be submitted to EscrowTech.

(c) EscrowTech will give written notice to Owner and the licensee of receipt of the Beneficiary Registration Form.

4. **Separate Product Depositories and Deposit Materials.** A separate "Depository" shall be established for each of the Software Products under this Escrow. For each Software Product, Owner shall deliver to EscrowTech the "Deposit Materials" (including "Updates") identified in Exhibit A attached hereto. Owner certifies to EscrowTech that Owner has the right to provide the Deposit Materials to EscrowTech for the purposes of this Agreement and that a release, if ever, of such Deposit Materials to any Beneficiary in accordance with this Agreement will not violate third party rights or U.S. export laws or regulations. Owner shall indemnify EscrowTech against, and hold it harmless from, any claim to the contrary.

(a) These Deposit Materials for a Software Product will be assigned to and placed in the Depository established for that Software Product. Deposit Materials delivered to EscrowTech shall be clearly marked by Owner to identify the Software Product to which the Deposit Materials pertain and to distinguish these Deposit Materials from the Deposit Materials corresponding to the other Software Products.

(b) Notwithstanding anything herein to the contrary, a Beneficiary shall only have rights under this Agreement with respect to the Deposit Materials in the Depositories established for the Software Products which are identified in the Beneficiary's Registration Form (or in a Depository for that Beneficiary as a designated Beneficiary under Section 7(f)).

5. **Encryption and Reproduction.** Owner warrants that none of the Deposit Materials will be encrypted or password protected and that all of the Deposit Materials will be in a readable and useable form (for purposes of the Permitted Use - see Section 14) and will be readily reproducible by EscrowTech for copying as needed under this Agreement (see e.g., Section 13). Exception: If Deposit Materials are transmitted electronically to EscrowTech via FTP or other electronic transmission method accepted by EscrowTech, then such Deposit Materials may be in

an encrypted format that is acceptable to EscrowTech and that can be decrypted by EscrowTech and stored in an unencrypted format on physical media (e.g., a CD ROM). It is Owner's responsibility to provide any decryption tools/keys, passwords, and information needed for decryption. It is not EscrowTech's responsibility to discover if any of the Deposit Materials are encrypted or password protected or to provide de-encryption tools/keys, passwords or information needed for decryption.

6. **Updates.** Owner shall update each Software Product's Depository with Updated Deposit Materials ("Updates") as described in Exhibit A. "Updates" shall be part of the "Deposit Materials."

7. **Deposit Procedure.** Deposit Materials shall be delivered by Owner to EscrowTech in accordance with EscrowTech's then-current deposit procedures or one of the following submission methods:

**Mail** - Duplicate copies (i.e., two sets) of all Deposit Materials in reliable storage media should be delivered by Owner through an appropriate mail delivery service or courier service (e.g., U.S. mail, UPS or Federal Express).

**RealTime Escrow** - Owner may submit "Deposit Materials" electronically through EscrowTech's online escrow management portal RealTime Escrow. Owner will follow the "Make an Online Deposit" outlined in the RealTime Escrow application.

**Automated Submission** - Owner may submit "Deposit Materials" through a regularly scheduled transmission script. The transmission script will deliver the "Deposit Materials" to EscrowTech's SFTP server and upon successful delivery notify EscrowTech. The transmission script must be configured by Owner with EscrowTech's guidance. If the Owner submits the Deposit Materials using the "Automated submission" method no more than 12 deposits a contract year will be allowed without an additional fee for excess deposits.

Regardless of the method, EscrowTech is not responsible if Owner fails to comply with the submission methods or to make deposits.

(a) **Deposit Inventory Form.** Owner will submit with the Deposit Materials a completed Deposit Inventory Form. Such Deposit Inventory Form shall be a representation by Owner to Beneficiary and

EscrowTech that the Deposit Materials conform to the descriptions and identifications in the Deposit Inventory Form. Depending on the submission method the Deposit Inventory Form will be submitted as follows:

**Mail** – A Deposit Inventory Form in paper form will be sent with the “Deposit Materials” through the mail or courier service. This Deposit Inventory Form template will be supplied by EscrowTech.

**RealTime Escrow** – A Deposit Inventory Form will be automatically generated by the RealTime Escrow application during the “Make an Online Deposit” process.

**Automated Submission** – Owner will configure the transmission script to notify EscrowTech, upon successful transmission, the following information: Escrow Number, Owner Name, Deposit Date, Software Product, Version Number, Additional Information, and confirmation of submission.

Regardless of the method, EscrowTech is not responsible for the information included within the Deposit Inventory Form or for Owner’s noncompliance.

(b) **Confirmation.** To confirm receipt of the Deposit Materials, EscrowTech will mail or otherwise deliver a copy of the Deposit Inventory Form to Owner and to each Beneficiary registered under this Escrow for the Software Product to which the Deposit Materials apply.

(c) **Deficiency.** If a Beneficiary believes that the Deposit Materials, as identified in the Deposit Inventory Form, are deficient (e.g., incomplete or inadequate) or if there is some other problem, then the Beneficiary shall notify Owner and resolve the matter with Owner. It is Owner’s responsibility to deposit all required Deposit Materials.

(d) **Reproducible.** It is Owner’s responsibility to ensure that the Deposit Materials provided by Owner (including, without limitation those on any electronic media - e.g., CD-ROMs, magnetic tapes, etc.) are provided in a reproducible form.

(e) **Verification.** EscrowTech is not responsible for verifying the completeness, accuracy, suitability, state, format, safety, quality, or content of the Deposit Materials. However, at the request of any Beneficiary or Beneficiaries, EscrowTech may conduct

technical verifications of Deposit Materials for such Beneficiary or Beneficiaries in accordance with a Technical Verification Addendum to this Agreement. The requesting Beneficiary or Beneficiaries must pay EscrowTech’s then-current fees plus expenses for the technical verifications.

(f) **File Name Listings.** At the option of Beneficiary, EscrowTech may generate a list of file names from the Deposit Materials and provide a copy of the list to Beneficiary. This only applies to Deposit Materials in an electronic form from which EscrowTech can generate the list on a PC running Windows. The copy of the list will be provided with the Confirmation of Receipt of Deposit Materials or separately. If Beneficiary exercises this option, the “File Listing Fee” will be paid to EscrowTech in accordance with the Fee Schedule attached hereto.

8. **Replacement of Obsolete Deposit Materials.** Owner may identify for EscrowTech any obsolete, outdated or redundant Deposit Materials and instruct EscrowTech to destroy or return the identified Deposit Materials. Such identification shall be made in writing and must be consistent with the labeling and identification used by Owner when the Deposit Materials were delivered to EscrowTech or be otherwise understandable to EscrowTech. The instructions to EscrowTech must be accompanied by written permission from each affected Beneficiary for EscrowTech to destroy or return the identified Deposit Materials in accordance with Owner’s instructions. The “Depository” and “Deposit Materials” shall cease to include any destroyed or returned Deposit Materials.

9. **License Agreement.** Owner and each Beneficiary have entered into one or more agreements identified in the Beneficiary Registration Form that relate to the Software. For that Beneficiary, such agreement(s) is (are) referred to herein as the “License Agreement.” This Software Escrow Agreement is “supplementary” to the License Agreement within the meaning of Section 365(n) of the U.S. Bankruptcy Code (11 U.S.C. 365(n)). If this Agreement and/or the License Agreement is (are) rejected by Owner as a debtor in possession or a trustee or by any other person or entity under the U.S. Bankruptcy Code, then Beneficiary may elect to retain its rights as provided in Section 365(n). The Parties intend that no bankruptcy or bankruptcy proceeding, petition, law or regulation (and no other proceeding, petition, law or regulation of a similar



nature in any state or foreign jurisdiction) will impede, delay or prevent the release of Deposit Materials to a Beneficiary in accordance with the provisions of this Agreement, and Owner hereby conveys and licenses to EscrowTech such rights (including intellectual property rights) as are necessary to allow EscrowTech to lawfully make such release and perform this Agreement. This license is granted as of the date of the Beneficiary's registration under this Agreement and shall predate any bankruptcy petition subsequent to such date.

**10. Embodiments of Intellectual Property.**

The Parties agree that the Deposit Materials are an "embodiment" of "intellectual property" as those terms are used in Section 365(n) of the U.S. Bankruptcy Code (11 U.S.C. 365(n)). The tangible Deposit Materials and any copies thereof made by EscrowTech in accordance with this Agreement are owned by EscrowTech, but such ownership does not include ownership of any copyrights or other intellectual property in or to the Deposit Materials.

**11. Release of Deposit Materials - Request of Beneficiary.** A Beneficiary will be entitled to receive the applicable Deposit Materials if the Release Condition described in the Beneficiary's Registration Form occurs. The applicable Deposit Materials are the Deposit Materials in the Depositories established for the Software Products for which the Beneficiary is registered under this Agreement. The following release procedure shall apply:

(a) **Notice to EscrowTech.** The Beneficiary shall give written notice to EscrowTech informing EscrowTech that the Release Condition has occurred and shall request EscrowTech in writing to release the applicable Deposit Materials to the Beneficiary. The Beneficiary will include in such notice a statement identifying the Software Products for which the Beneficiary is registered and to which this request applies.

(b) **Notice to Owner.** EscrowTech shall then promptly send written notice to Owner of the Beneficiary's notice and request for release. Such notice will be sent by a "next day" or "overnight" or "priority" or "express" delivery service (e.g., Federal Express, UPS, U.S. Express Mail, etc.).

(c) **Release and Waiting Period.** Unless there is a timely dispute or objection as provided in Section 11(d) below, EscrowTech shall release the Deposit

Materials to the Beneficiary promptly after expiration of the Waiting Period. The "Waiting Period" shall be two weeks, beginning on the date that the notice is sent by EscrowTech to Owner.

(d) **Dispute.** If Owner disputes the Beneficiary's right to the Deposit Materials or otherwise objects to their release, then Owner must give written notice of such dispute or objection to EscrowTech prior to the conclusion of the Waiting Period. If EscrowTech receives such timely notice of dispute or objection, EscrowTech will not release the Deposit Materials to the Beneficiary until the dispute is resolved by Owner and the Beneficiary in accordance with Section 19 or by court order. Such resolution will determine whether or not the Beneficiary is entitled to receive the Deposit Materials. EscrowTech has no obligation to determine whether or not the Beneficiary is entitled to the Deposit Materials.

(e) **Partial Release.** If Owner believes that the Beneficiary is entitled to a release of only a portion of the Deposit Materials (e.g., Deposit Materials corresponding to unlicensed versions - see (f) below), it is the responsibility of Owner to indicate this in a written notice to EscrowTech and to clearly identify in such notice the portion of the Deposit Materials that should be released to the Beneficiary. This notice must be given promptly and must be received by EscrowTech within the above Waiting Period. If the Beneficiary believes that it is entitled to more than said portion of the Deposit Materials, then this dispute shall be resolved in accordance with Section 19.

(f) **Unlicensed Versions.** A Beneficiary is not entitled to receive Deposit Materials corresponding to Software Product versions not licensed or provided by Owner to Beneficiary. [For example, if a Depository includes versions 1.0, 2.0, 2.1 and 3.0 of a Software Product, but only versions 2.0 and 2.1 are licensed to the Beneficiary, then the Beneficiary is only entitled to a release of the Deposit Materials corresponding to versions 2.0 and 2.1.] If applicable, it is the responsibility of Owner under (e) above to inform EscrowTech of the specific Deposit Materials in the Depository which should not be released to the Beneficiary. In the absence of such information, EscrowTech may release all of the Deposit Materials in the Depository or all of the Deposit Materials requested by the Beneficiary under (a) above.

12. **Release of Deposit Materials - Owner's Instruction.** Upon receipt of notice and instruction from Owner and the receipt of the Release Fee, EscrowTech shall release the applicable Deposit Materials to the Beneficiary designated in the instruction.

13. **Copies.** Because there are multiple Beneficiaries under this Escrow, any Deposit Materials released to Beneficiaries under this Agreement may be in the form of copies of the Deposit Materials. EscrowTech may copy the Deposit Materials for the purposes of this Agreement. Such copies shall be considered Deposit Materials for the purposes of this Agreement.

14. **Use of Released Deposit Materials.** If the Deposit Materials are released to a Beneficiary under this Agreement, the Beneficiary may only use the Deposit Materials as permitted in its Beneficiary Registration Form ("Permitted Use"). Owner hereby licenses Beneficiary to practice the Permitted Use. Although Beneficiary is not entitled to receive any Deposit Materials until after a release under this Agreement, this Permitted Use license is granted as of the date the applicable Beneficiary Registration Form is first signed by Beneficiary or Owner and shall predate any bankruptcy petition subsequent to such date. If this Agreement and/or the License Agreement are/is rejected by Owner as a debtor in possession or by a trustee or by any other person or entity under the U.S. Bankruptcy Code, then the Beneficiary may elect to retain this Permitted Use license as part of the rights it may retain in accordance with Section 365(n) of the U.S. Bankruptcy Code. This shall not negate, prejudice or limit any other rights which the Beneficiary may have.

15. **Fees.** EscrowTech shall receive the following fees and payments:

(a) **Annual Fee.** Beginning on the date of this Agreement and on each anniversary thereafter until termination of the Escrow, Beneficiary shall pay an Annual Fee to EscrowTech in accordance with the Fee Schedule (Exhibit B). The Annual Fee is payable at the beginning of the contract year to which it is applicable. The Annual Fee will be increased for each Software Product in excess of one - see the fees for Additional Software Products in the FeeSchedule.

(b) **Beneficiary Fees.** For each Beneficiary, the Beneficiary Fee will be paid to EscrowTech in

accordance with the Fee Schedule (Exhibit B). The Beneficiary Fee is first payable at the time of registration. This entitles the Beneficiary to registration for the remainder of the contract year in which the Beneficiary Fee is paid. Thereafter and until the Beneficiary ceases to be a "Beneficiary" (see Section 16), the Beneficiary Fee will be paid to EscrowTech in advance for each subsequent contract year. "Contract years" are based on the date of this Agreement and anniversaries thereof.

(c) **Release Fees.** Each Beneficiary requesting a release of any Deposit Materials under Section 11 shall pay the Release Fee (see Exhibit B) to EscrowTech. If any Deposit Materials are released to a Beneficiary at the instruction of Owner under Section 12, Owner shall pay the Release Fee to EscrowTech.

(d) **Excess Storage Charges.** For each Software Product and its Depository: If the total vault storage requirement for the Deposit Materials exceeds two cubic feet, then Owner will pay the Excess Storage Charge (see Exhibit B).

(e) **Increases.** The fees set forth in Exhibit B are fixed for the first three years of this Agreement. Thereafter, fees are subject to reasonable increase by EscrowTech upon written notice. EscrowTech's then-current fees shall be payable.

(f) **Costs.** Each Beneficiary shall pay EscrowTech for reasonable costs incurred by EscrowTech in releasing, copying and delivering any Deposit Materials to the Beneficiary. All other out-of-pocket costs reasonably incurred by EscrowTech in connection with this Agreement are reimbursable by the applicable Beneficiary and Owner to EscrowTech. Costs are not included in the above Fees and are payable in addition to the above Fees.

16. **Termination of Beneficiary's Registration.** A Beneficiary's registration will terminate and the Beneficiary will cease to be a "Beneficiary" under this Agreement if any of the following occurs:

(a) The Beneficiary gives written notice of such termination to EscrowTech.

(b) A termination condition under the Beneficiary Registration Form is satisfied. If any such termination condition is satisfied, the Beneficiary and Owner will give written notice thereof to EscrowTech.

If such notice is given by Owner, but not the Beneficiary, then EscrowTech may send notice thereof to the Beneficiary and if EscrowTech does not receive a written objection from the Beneficiary within three weeks after the date of EscrowTech's notice, then EscrowTech may terminate the Beneficiary's registration.

(c) The Beneficiary breaches this Agreement and does not cure such breach within 30 days of written notice of such breach, and EscrowTech gives notice of termination to the Beneficiary.

(d) The Escrow terminates.

EscrowTech will have no obligation or liability to the Beneficiary after termination of its registration. Termination of a Beneficiary's registration shall not affect the other Beneficiaries.

**17. Termination of Escrow.** Subject to Section 18, this Escrow may be terminated by either Owner or EscrowTech upon 90 days advance written notice of termination to the other Party and to the Beneficiaries. Termination will not be effective until the end of the 90 day period (and any extension pursuant to Section 18). If a Release Condition occurs and EscrowTech is given written notice thereof under Section 11(a) prior to the date of termination, then the Escrow will not terminate without the written consent of the affected Beneficiaries. Upon termination of the Escrow, the following shall apply:

(a) EscrowTech shall either return the Deposit Materials to Owner or destroy the Deposit Materials, whichever Owner requests. If destruction is requested, EscrowTech will certify in writing to Owner that such destruction has occurred.

(b) EscrowTech shall have no obligation or liability to Owner or any Beneficiary after termination.

(c) Termination of the Escrow shall not affect any rights and licenses granted to EscrowTech or a Beneficiary with respect to Deposit Materials released to (or which should be released to) the Beneficiary because of a Release Condition occurring prior to the date of termination.

**18. Establishment of Substitute Escrow.** During the 90 day period under Section 17, Owner shall establish a substitute escrow of the Deposit

Materials with a third party escrow agent for the benefit of each Beneficiary. The substitute escrow must be approved by the Beneficiary, but such approval will not be unreasonably withheld or delayed. If necessary, this matter shall be resolved in accordance with Section 19. If more than 90 days is needed to establish the substitute escrow and if EscrowTech receives written notice from Owner or the Beneficiary of such need prior to the end of such 90 days, then the 90 day period under Section 17 shall be extended as reasonably necessary and the Escrow shall not terminate until EscrowTech receives written notice from Owner that the substitute escrow has been established and approved. Owner has no obligation to establish a substitute escrow if all License Agreements for all Beneficiaries have terminated or if none of the Beneficiaries request a substitute escrow within three weeks after a written inquiry thereof from Owner to each Beneficiary.

**19. Dispute Resolution.** In the event of any dispute between any two or more of the Parties relating to this Agreement or the Escrow, they shall first seek to settle the dispute by mutual agreement. If they have not reached a settlement within one week, then any disputing Party may thereafter submit the dispute to arbitration, and if so submitted, such dispute shall be finally settled by arbitration conducted in accordance with the commercial arbitration rules of the American Arbitration Association or its successor. The disputing Parties shall attempt to mutually agree upon a neutral arbitrator. If the disputing Parties cannot reach such agreement, they shall request the American Arbitration Association or its successor to designate a neutral arbitrator. Any arbitration involving EscrowTech as a party shall be conducted in Salt Lake City, Utah. Any arbitration to which EscrowTech is not a party shall be conducted in Owner's city as indicated at the beginning of this Agreement. This Section does not apply to any dispute between two Beneficiaries that does not include EscrowTech or Owner as a party to such dispute. The institution of any arbitration proceeding hereunder shall not relieve any Party of its obligation to make payments under this Agreement. The decision by the arbitrator shall be binding and conclusive upon the Parties, their successors, assigns and trustees and they shall comply with such decision in good faith, and each Party hereby submits itself to the jurisdiction of the courts of the place where the arbitration is held, but only for the entry of judgment or for the enforcement of the decision of the arbitrator hereunder. Judgment

upon the award may be entered in any court having jurisdiction.

**20. Protection of Deposit Materials.** EscrowTech shall keep the Deposit Materials delivered to it in secure storage and shall keep the contents thereof confidential. If any of the Deposit Materials are damaged, destroyed or lost by fire, theft, accident, or other mishap or cause, Owner shall promptly submit to EscrowTech such Updates or replacements as are necessary to replace the damaged, destroyed or lost Deposit Materials. There shall be no Excess Update Fees charged for such Updates or replacements.

**21. Indemnification.** In the event that EscrowTech takes any action or inaction at the request or demand of Owner or a Beneficiary, then the Owner shall indemnify and hold harmless EscrowTech and its directors, officers, employees, shareholders, and representatives from and against any and all liabilities, claims, judgments, damages, losses and expenses, including attorneys' fees, arising out of or relating to such action or inaction.

**22. Depository Only.** EscrowTech acts hereunder as a depository only and is not responsible or liable for the completeness, accuracy, suitability, state, format, safety, quality, content, sufficiency, correctness, genuineness or validity of the Deposit Materials or any document submitted to EscrowTech or the execution of the same or the identity, authority, or rights of any person executing or depositing the same. EscrowTech is not responsible for any loss of Deposit Materials due to defective, outdated, or unreliable storage media (e.g., CD ROMs, magnetic tape, disks, etc.) or for the degradation of storage media.

**23. Uncertainty.** Notwithstanding anything in this Agreement to the contrary, if EscrowTech is uncertain as to any duty, obligation, demand, or right, EscrowTech may hold the Deposit Materials and refrain from taking any action and wait for a final resolution under Section 19 or a court order.

**24. Reliance.** EscrowTech shall not incur any liability in acting upon any notice, request, waiver, consent, receipt or other paper or document believed by EscrowTech to be genuine and to be signed by the proper party or parties, or in acting upon any resolution under Section 19 or any court order.

**25. Extraordinary Services.** In addition to the Fees and Charges for the usual services of EscrowTech under this Agreement (see Section 15 and Exhibit B), EscrowTech shall be entitled to additional reasonable compensation should EscrowTech be requested or required to perform any additional or extraordinary service; and EscrowTech shall be reimbursed for any out-of-pocket expenses (including, without limitation, travel expenses and fees of counsel) reasonably incurred in connection with such additional or extraordinary services. Extraordinary services include, but are not limited to, any involvement of EscrowTech, at the request or demand of Owner or a Beneficiary, in any arbitration or litigation between Owner and the Beneficiary.

**26. Disclaimer.** ESCROWTECH MAKES NO WARRANTY NOT EXPRESSLY SET FORTH HEREIN. ANY IMPLIED WARRANTIES ARE DISCLAIMED AND EXCLUDED BY ESCROWTECH.

**27. Limitation on Liability.** FOR ANY AND ALL CLAIMS AND CAUSES OF ACTION (INCLUDING WITHOUT LIMITATION BREACH OF CONTRACT, TORT, MALPRACTICE, ETC.), ESCROWTECH'S AGGREGATE LIABILITY TO OWNER AND THE BENEFICIARIES SHALL NOT EXCEED THE TOTAL FEES PAID TO ESCROWTECH UNDER THIS AGREEMENT. IN NO EVENT SHALL ESCROWTECH BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES OR LOSS OF PROFITS, REVENUES OR BUSINESS, EVEN IF ADVISED OF THE POSSIBILITY THEREOF.

**28. Interpretation.** The wording used in this Agreement is the wording chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against or in favor of any Party. Section headings are for convenience only, and do not limit or affect the provisions of this Agreement or their interpretation.

**29. Entire Agreement.** This Agreement constitutes the entire agreement of the Parties relating to the Escrow. This Agreement sets forth all the duties and obligations of EscrowTech with respect to any and all matters relating to this Agreement, the Escrow or the Deposit Materials. EscrowTech has no implied duties or obligations. No prior, contemporaneous, or subsequent purchase order that contains conflicting or additional terms or conditions will be binding on parties even if such

purchase order is acknowledged or accepted.

30. **Force Majeure.** Except for obligations to make payment, no Party shall be liable for any failure to perform arising from causes beyond its control, including, but not limited to, fire, storm, flood, earthquake, explosion, accident, theft, terrorism, acts of public enemies, war, insurrection, sabotage, illness, labor disputes or shortages, product shortages, failure or delays in transportation, inability to secure materials, parts or equipment, acts of God, or acts of any governmental authority or agency thereof.

31. **Governing Law.** This Agreement, the Escrow and the relationship of EscrowTech with Owner and each Beneficiary shall be governed and construed under and in accordance with the laws of the state of Utah without regard to conflict of laws principles. Furthermore, in the event of any litigation or arbitration between EscrowTech and Owner or between EscrowTech and any Beneficiary, such litigation or arbitration shall be conducted exclusively in Salt Lake City, Utah and the Parties hereby agree and submit to such jurisdiction and venue.

32. **Notices.** All notices under this Agreement shall be in writing and shall be delivered to the address indicated for the intended Party at the beginning of this Agreement or, in the case of a Beneficiary, on Beneficiary's Registration Form, or to

such substitute address as any Party may designate for itself by proper notice to the other Parties. It is the responsibility of each Party to keep the other Parties informed of its address and telephone and fax numbers (except that a Beneficiary is not obligated to keep other Beneficiaries informed of this information).

33. **Modification.** This Agreement may only be modified, amended or rescinded by a writing signed by all affected Parties.

34. **Assignment.** This Agreement may be assigned by a Party to a successor who acquires substantially all of such Party's business assets relevant to the subject matter of this Agreement. The assigning Party shall give notice thereof to the other affected Parties and shall deliver to such other affected Parties a copy of the successor's written agreement to accept or assume this Agreement.

35. **Execution.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. The persons signing below represent that they are duly authorized to execute this Agreement for and on behalf of the Party for whom they are signing. The signature of a signing party may be in the form of an electronic signature.

[Signatures are found on Next Page.]



**Agreed to and accepted by:**

\_\_\_\_\_  
Owner Company Name

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
EscrowTech International, Inc.  
Escrow Agent

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

## EXHIBIT A

### 1. SOFTWARE PRODUCTS

The following "Software" is licensed or provided by Owner to Beneficiary under their License Agreement:

(Note: You may want to avoid using version numbers if updates change version numbers)

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Software Product No. 1

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Software Product No. 2

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Software Product No. 3

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Software Product No. 4

### 2. DEPOSIT MATERIALS

Owner shall deliver to EscrowTech the following "Deposit Materials" to be held in the Escrow:

Source Code

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Deposit Materials for Software Product No. 1

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Deposit Materials for Software Product No. 2

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Deposit Materials for Software Product No. 3

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Deposit Materials for Software Product No. 4

### 3. UPDATES

If and as Beneficiary receives under the License Agreement any new version of, update to, or replacement for the Software, Owner shall update the Escrow by delivering to EscrowTech the corresponding new version of, update to, or replacement for the Deposit Materials ("Updated Deposit Materials" or "Updates"). Owner shall keep the Deposit Materials current with the Software licensed or provided to Beneficiary under the License Agreement. However, Owner shall not be obligated to provide Updates more frequently than 4 times per contract year.

## EXHIBIT B

### Fee Schedule<sup>1</sup>

Services	Description of Services	Fee	Payor
<input checked="" type="checkbox"/> Setup Fee	EscrowTech will setup a standard escrow account governed by the standard escrow agreement.	N/A	N/A
<input checked="" type="checkbox"/> Escrow	For added retention security, EscrowTech will provide dual site storage for deposits within EscrowTech's escrow vaults.  RealTime Escrow access will be provided for online-management of account which includes access to all executed documents, Status Reports, ability to view and pay invoices, view all Confirmation of Receipt of Deposit, and submit Deposit Materials.  Customization of this agreement may be subject to an increase in the annual fee.	N/A	N/A
Beneficiary Fee	EscrowTech will register a Beneficiary to the escrow account through the Beneficiary Registration Form. The Beneficiary's registration will be governed by the escrow agreement. RealTime Escrow access will be provided online-management of account which includes access to all executed documents, Status Reports, ability to view and pay invoices, view all Confirmation of Receipt of Deposit, and submit Deposit Materials.	\$1495 per year	Beneficiary
Additional Software Products	EscrowTech will set up an additional Software Product deposit for additional Deposit Materials. For added retention security, EscrowTech will provide dual site storage for deposits.	N/A	N/A
<input type="checkbox"/> Level 1 File Listing Verification Report	In addition to the Confirmation Receipt of Deposit and Standard Inspection of Deposit Materials, EscrowTech will send to Beneficiary a File Listing Verification Report. The File Listing Verification Report includes a file listing, a file classification table, Cryptographic hash function (MD5) for each file, a virus scan outputs, and a Deposit Inventory Form.  The annual fee includes this service to be performed on up to four Deposits per year. A fee of \$100 USD will be charged to perform this service on each Deposit to the escrow in excess of four. This service can only be performed on Deposit Materials that are readable on a PC running Windows.	\$595 per year	<input type="checkbox"/> Owner, or <input type="checkbox"/> Beneficiary
<input type="checkbox"/> Level 2 Technical Verification – Deposit Analysis	In addition to the File Listing Verification Report, EscrowTech will perform an analysis of the Build Instructions included with the Deposit Materials. The report will identify the hardware, operating system, programming languages, third party software, and library dependencies. The Owner will be required to complete a Technical Verification Questionnaire to complete the Deposit Analysis.	\$1095 per Analysis	<input type="checkbox"/> Owner, or <input type="checkbox"/> Beneficiary
<input type="checkbox"/> Level 3 Technical Verification – Build and Compile	EscrowTech will perform a Technical Verification on deposit and any subsequent deposits upon request, which includes the outputs of the Technical Verification – Deposit Analysis as described above. EscrowTech will compile the source code in Deposit Materials and will build an executable program following build instructions and configuration information from the Owner (with respect to programs that are not compiled into executable programs in normal operations, EscrowTech will then test that the interpreted code operates). The development environment included in the Deposit Materials will be used by EscrowTech for this purpose. Owner must provide the programming documentation, build and compile instructions, and any other materials, resources, equipment, or tools needed by EscrowTech to enable or facilitate the technical verification.  The Parties and EscrowTech will agree on a custom Technical Verification Addendum prior to start of fulfillment.	Starting at \$2995 per verification or based on Technical Verification Addendum	<input type="checkbox"/> Owner, or <input type="checkbox"/> Beneficiary
<input type="checkbox"/> Level 4 Technical Verification –	Per the Technical Verification Addendum, EscrowTech will compare and analyze the files and executables against those being used by the Beneficiary. The comparison will include a file size match and an md5/sha1 checksum.	Based on Technical Verification	<input type="checkbox"/> Owner, or <input type="checkbox"/> Beneficiary

<sup>1</sup> These Fees are fixed for the first three years of the Escrow Agreement. Thereafter, all Fees are subject to increase by EscrowTech upon written notice. In addition, payments not made within 45 days of the date of the invoice are subject to a 5% late fee plus interest at the rate of 1.5% per month (but not exceeding any rate or amount prohibited by applicable law) until paid in full. In the event that a fee or payment under this Agreement is owed by a Party to EscrowTech, but not paid, then the other party must pay such fee or payment to EscrowTech.

Binary Comparison		Addendum	
<input type="checkbox"/> <b>Level 5</b> Technical Verification – Test Plan	Per the Technical Verification Addendum, EscrowTech will install the executables on a target computer and will test the program for functionality following the steps agreed upon by the Owner and Beneficiary.	Based on Technical Verification Addendum	<input type="checkbox"/> Owner, or <input type="checkbox"/> Beneficiary
Excess Storage Fee	Two cubic feet of space is dedicated to each account. If more than two cubic feet of space is required to hold the Deposit Materials, the Excess Storage Fee may be assessed.	\$70 per extra cubic foot per year	Owner
Release of Deposit Materials	A Release Fee will be charged each time a release of the Deposit Materials is requested and fulfilled, payable by the requesting party.	\$250 per release	Requesting Party

**EXHIBIT C**  
**Additional Contacts for Owner**

**1. General Counsel Contact**

Attorney Company Name	Counsel Contact
Address Line 1	Telephone
Address Line 2	Facsimile
City, State, Zip Code	e-mail Address
Country	

**2. Billing Contact**

Owner Company Name	Billing Contact
Address Line 1	Telephone
Address Line 2	Facsimile
City, State, Zip Code	e-mail Address
Country	



**EXHIBIT D**  
**Special Conditions**

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## **Exhibit E**

### **Satisfaction Guarantee**

If this is Owner's first escrow with EscrowTech, then:

During the first year of this Agreement, if Owner is dissatisfied for any reason with EscrowTech's services, then Owner may terminate the Escrow (in accordance with Sections 15 and 16) and receive a full refund of all escrow fees paid by Owner to EscrowTech during the first year for this Escrow. To be eligible for the refund, Owner must terminate the Escrow prior to the end of the first year of this Agreement and must tell EscrowTech why Owner is not satisfied (so that EscrowTech will know how to improve its services). This refund does not include verification fees or out-of-pocket expenses.



## Beneficiary Registration Form

Owner Company Name	Escrow Number	MB-SP
Beneficiary Company Name	Main Contact	
Address Line 1	Telephone	
Address Line 2	Facsimile	
City, State, Zip Code	e-mail Address	
Country		

This Beneficiary Registration Form applies to the above-identified Escrow and the Software Escrow Agreement dated \_\_\_\_\_ (MM/DD/YYYY) to which Owner and EscrowTech International, Inc. ("EscrowTech") are parties (the "Escrow Agreement").

Owner and Beneficiary have entered into one or more other agreements identified below:

\_\_\_\_\_  
License Agreement

Such agreement(s) (including addendums or amendments thereto, if any) is (are) referred to in the Escrow Agreement as the "License Agreement."

The following Software Products are licensed to Beneficiary pursuant to the License Agreement and Beneficiary is registered under the Escrow Agreement for these Software Products only:

\_\_\_\_\_  
Software Product No. 1

\_\_\_\_\_  
Software Product No. 2

\_\_\_\_\_  
Software Product No. 3

Beneficiary has received and reviewed a copy of the Escrow Agreement. Beneficiary agrees to the terms and conditions of the Escrow Agreement and is hereby made a Party thereto. Beneficiary is entitled to the rights and benefits of a "Beneficiary" under the Escrow Agreement and accepts the obligations of a "Beneficiary" under the Escrow Agreement.

Appendix 1, attached hereto, is part of this Beneficiary Registration Form and describes the Release Condition and Permitted Use applicable to the Beneficiary under the Escrow Agreement.

**Agreed to and accepted by Owner and Beneficiary:**

\_\_\_\_\_  
Date of Beneficiary Registration

\_\_\_\_\_  
Owner Company Name

\_\_\_\_\_  
Beneficiary Company Name

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

*This Beneficiary Registration must be sent to EscrowTech International, Inc.*

\_\_\_\_\_  
EscrowTech Authorized Signature

\_\_\_\_\_  
Date Received

## **Appendix 1**

### **1. RELEASE CONDITION:**

The Release Condition shall be deemed to have occurred if:

### **2. PERMITTED USE OF RELEASED DEPOSIT MATERIALS:**

The following apply to Deposit Materials released to Beneficiary in accordance with the Software Escrow Agreement:

### **3. TERMINATION OF REGISTRATION – TERMINATION CONDITIONS**

(see Subsection 16(b) of the Software Escrow Agreement)

In addition to other grounds for termination under Section 16 or 17, Beneficiary's Registration will terminate if any of the following termination conditions is satisfied:

1. The License Agreement terminates; or
2. The License terminates; or
3. Owner's obligations to provide maintenance and support services to Beneficiary for the Software have ended.



## Appendix 2 Additional Contacts

### 1. General Counsel Contact

Attorney Company Name	Counsel Contact
Address Line 1	Telephone
Address Line 2	Facsimile
City, State, Zip Code	e-mail Address
Country	

### 2. Billing Contact

Beneficiary Company Name	Billing Contact
Address Line 1	Telephone
Address Line 2	Facsimile
City, State, Zip Code	e-mail Address
Country	

### Appendix 3 Additional Services

Services	Description of Services	Fees	Payor
<input type="checkbox"/> <b>Level 1</b> File Listing Verification Report	<p>In addition to the Confirmation Receipt of Deposit and Standard Inspection of Deposit Materials, EscrowTech will send to Beneficiary a File Listing Verification Report. The File Listing Verification Report includes a file listing, a file classification table, Cryptographic hash function (MD5) for each file, a virus scan outputs, and a Deposit Inventory Form.</p> <p>The annual fee includes this service to be performed on up to four Deposits per year. A fee of \$100 USD will be charged to perform this service on each Deposit to the escrow in excess of four. This service can only be performed on Deposit Materials that are readable on a PC running Windows.</p>	\$595 per year	<input type="checkbox"/> Owner, or <input type="checkbox"/> Beneficiary
<input type="checkbox"/> <b>Level 2</b> Technical Verification – Deposit Analysis	In addition to the File Listing Verification Report, EscrowTech will perform an analysis of the Build Instructions included with the Deposit Materials. The report will identify the hardware, operating system, programming languages, third party software, and library dependencies. The Owner will be required to complete a Technical Verification Questionnaire to complete the Deposit Analysis.	\$1095 per Analysis	<input type="checkbox"/> Owner, or <input type="checkbox"/> Beneficiary
<input type="checkbox"/> <b>Level 3</b> Technical Verification – Build and Compile	<p>EscrowTech will perform a Technical Verification on deposit and any subsequent deposits upon request, which includes the outputs of the Technical Verification – Deposit Analysis as described above. EscrowTech will compile the source code in Deposit Materials and will build an executable program following build instructions and configuration information from the Owner (with respect to programs that are not compiled into executable programs in normal operations, EscrowTech will then test that the interpreted code operates). The development environment included in the Deposit Materials will be used by EscrowTech for this purpose. Owner must provide the programming documentation, build and compile instructions, and any other materials, resources, equipment, or tools needed by EscrowTech to enable or facilitate the technical verification.</p> <p>The Parties and EscrowTech will agree on a custom Technical Verification Addendum prior to start of fulfillment.</p>	Starting at \$2995 per verification or based on Technical Verification Addendum	<input type="checkbox"/> Owner, or <input type="checkbox"/> Beneficiary
<input type="checkbox"/> <b>Level 4</b> Technical Verification – Binary Comparison	Per the Technical Verification Addendum, EscrowTech will compare and analyze the files and executables against those being used by the Beneficiary. The comparison will include a file size match and an md5/sha1 checksum.	Based on Technical Verification Addendum	<input type="checkbox"/> Owner, or <input type="checkbox"/> Beneficiary
<input type="checkbox"/> <b>Level 5</b> Technical Verification – Test Plan	Per the Technical Verification Addendum, EscrowTech will install the executables on a target computer and will test the program for functionality following the steps agreed upon by the Owner and Beneficiary.	Based on Technical Verification Addendum	<input type="checkbox"/> Owner, or <input type="checkbox"/> Beneficiary

## **Appendix 4 Special Conditions**

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***DELETE FROM THIS POINT DOWN. THE LANGUAGE BELOW IS SAMPLE LANGUAGE AND MAY BE USED TO CUSTOMIZE YOUR BENEFICIARY REGISTRATION FORM.***

**APPENDIX 1  
(Sample)**

**1. RELEASE CONDITION**

The Release Condition shall be deemed to have occurred if any of the following is satisfied:

- a. Owner files a petition for protection under the U.S. Bankruptcy Code, or an involuntary petition in bankruptcy is filed against Owner and is not dismissed within 60 days thereafter.
- b. Owner defaults in its obligation to provide maintenance and support services as required by the License Agreement (or any other contract with Beneficiary), and fails to cure such default within 10 days after receiving written notice of the default from Beneficiary. The notice must describe the default and state the action which Beneficiary believes is necessary to cure the default.
- c. Beneficiary becomes entitled to a release of the Deposit Materials (i.e., source code for the Software) pursuant to the terms of the License Agreement.

**2. PERMITTED USE OF RELEASED DEPOSIT MATERIALS:**

The following apply to Deposit Materials released to Beneficiary in accordance with the Software Escrow Agreement:

- a. Beneficiary may only use the Deposit Materials to maintain, modify and enhance the Software. The maintained, modified and enhanced Software may only be used in accordance with the License Agreement.
- b. Beneficiary may not disclose the Deposit Materials to any third party and shall keep the Deposit Materials confidential, except as provided below.
- c. Beneficiary may engage the services of independent contractors (e.g., computer programmers or an outsourced maintenance service) to assist Beneficiary in exercising its Permitted Use rights. Each such independent contractor must agree in writing that it/he/she will not disclose or transfer the Deposit Materials to any other person, and will not use the Deposit Materials for any purpose other than to assist Beneficiary in exercising its Permitted Use rights. These restrictions shall not limit or negate the rights, if any, of the independent contractor with respect to materials that are similar or identical to the Deposit Materials and are lawfully received by the independent contractor from a source other than Beneficiary (e.g., a maintenance service that receives similar or identical materials from other beneficiaries or licensees).
- d. Items a., b. and c. above are subject to such additional rights or limitations as may be set forth in a provision, if any, in the License Agreement which addresses use of the released Deposit Materials by Beneficiary.

The Permitted Use is a fully paid-up license and may not be revoked, terminated or rejected without Beneficiary's written consent. This Permitted Use license also includes the right to use and copy the binary, executable and object

code versions of the Software and the maintained, modified and enhanced versions of Software created from or with the Deposit Materials.

### **3. TERMINATION OF REGISTRATION – TERMINATION CONDITIONS**

(see Subsection 16(b) of the Software Escrow Agreement)

In addition to other grounds for termination under Section 16 or 17, Beneficiary's Registration will terminate if any of the following termination conditions is satisfied:

1. The License Agreement terminates; or
2. The License terminates; or
3. Owner's obligations to provide maintenance and support services to Beneficiary for the Software have ended.