

SOFTWARE ESCROW AGREEMENT

NUMBER _____

This Escrow Agreement (AGREEMENT) is made between an ESCROW AGENT (as hereinafter defined), a TECHNOLOGY VENDOR (as hereinafter defined), Multiple Beneficiaries, (as hereinafter defined), collectively referred to as the ("BENEFICIARIES", each a "BENEFICIARY") wherein the Multiple Beneficiaries are separately identified in Escrow Form 2.2. As used in this Agreement, each BENEFICIARY is a contracting party and collective action is not required to implement various terms and conditions in this Agreement. Each entity is a Party and collectively Parties to this AGREEMENT and effective between various Parties as defined by the completion of the events identified below ("Effective Date"), each of the dates to be entered by the ESCROW AGENT upon receipt and shared with all Parties electronically at identified email addresses. Both of events (1) and (2) must be completed no later than thirty (30) days after receipt of the first signature. If both of events (1) and (2) do not occur within the thirty (30) days, then this Agreement is null and void absent an express amendment (written or electronic) to this Agreement by the ESCROW AGENT and the TECHNOLOGY VENDOR. If event (2) does not occur within thirty (30) days, then ESCROW AGENT may, at its option, declare this Agreement null and void. ESCROW AGENT'S acceptance of the payment of the TECHNOLOGY VENDOR Escrow Fee(s) after the thirty (30) days constitute a waiver of ESCROW AGENT'S option to declare this Agreement null and void.

- (1) Receipt of the signature of the TECHNOLOGY VENDOR by the ESCROW AGENT;
 - (a) Receipt Date: _____;

- (2) Receipt of 1st year non-refundable payment of the TECHNOLOGY VENDOR Escrow Fee(s) by the ESCROW AGENT;
 - (a) Receipt Date: _____; and

Based upon the later of the Receipt Dates above, the dates within the thirty (30) day window (and any extensions thereof), the TECHNOLOGY VENDOR Effective Date is _____. Each BENEFICIARY Effective Date is as shown on Escrow Form 2.2.

As defined herein, the ESCROW AGENT is:

National Software Escrow, Inc.,
8225 Brecksville Rd., Building Three, Suite 105,
Brecksville, OH 44141

license to each BENEFICIARY for its use of certain computer software program(s) and related documentation which are proprietary to the TECHNOLOGY VENDOR and access to which must be restricted to protect its business.

As defined herein, the TECHNOLOGY VENDOR is:

- C. *Whereas*, the TECHNOLOGY VENDOR has on-going and timely maintenance and upgrade obligations to each BENEFICIARY as provided by the License Agreement.

- D. *Whereas*, each BENEFICIARY must have access to those materials identified in this Agreement if the TECHNOLOGY VENDOR is unable to satisfy its obligations as set forth in the License Agreement.

- E. *Whereas*, the TECHNOLOGY VENDOR and each BENEFICIARY affirmatively represent that there is no known Default as defined in §3.1, prior to the latest EFFECTIVE DATE of this AGREEMENT.

As defined herein, BENEFICIARIES, each a BENEFICIARY, are separately identified in Escrow Form 2.2.

- A. *Whereas* the TECHNOLOGY VENDOR and each BENEFICIARY have entered into a License Agreement (the "License Agreement").

- B. *Whereas*, pursuant to the terms of the License Agreement, the TECHNOLOGY VENDOR granted a

F. *Whereas*, to address the respective needs of the TECHNOLOGY VENDOR and each BENEFICIARY, the TECHNOLOGY VENDOR and each BENEFICIARY in consideration of the promises and the mutual covenants contained herein, have agreed to escrow Deposit Materials with the ESCROW AGENT and the ESCROW AGENT agrees to accept and to likewise be bound as follows:

1. DEFINITIONS

1.1 "Source Code" means a form suitable for reproduction by computer and/or photocopy equipment, and consists of a full source language statement of the Program or Programs as initially installed by each BENEFICIARY or as later revised, updated or improved comprising the product and any existing Program maintenance documentation, including all flow charts, schematics and annotations which comprise the precoding detailed design specifications and all other materials necessary to allow a reasonably skilled third-party programmer to maintain or enhance the product without the help of any other person or reference to any other material.

1.2 "Programs" means one of the computer software programs identified by the TECHNOLOGY VENDOR to the ESCROW AGENT as being a program for purposes of this Agreement. This includes any program so identified in a deposit form (Form 2.1) (electronic version or hard copy version) sent by the TECHNOLOGY VENDOR to the ESCROW AGENT via Electronic Delivery or Physical Delivery (as defined below) and any additional program that the TECHNOLOGY VENDOR identifies in a deposit form (Form 2.1) that it submits to the ESCROW AGENT as a deposit as hereinafter provided. A given Program includes all components thereof and all Updates therefore (as hereinafter defined). A given Program includes any different versions thereof for different users, user agents, and operating systems.

1.3 "Default" means one or more of the developments or events specified in §3.0 of this Agreement.

1.4 "Electronic Delivery" means deposit by electronic transfer such as electronic mail (email), File Transfer Protocol (FTP), or any other electronic transfer that communicates data from one storage location to another storage location. Formats for Electronic Delivery include any file format that can be stored on a computer-readable medium. For the purposes of this agreement, an

Electronic Delivery will be treated as a Physical Delivery.

1.5 "Physical Delivery" means deposit by any non-electronic delivery manner such as, courier, courier service, postal service, mail service, hand-delivery, or any physical delivery in which data stored on tangible medium exchanges possession from one entity to another entity. Formats for a Physical Delivery can be optical disc storage (CD-ROM, Compact Disc, (CD), Digital Video Disc (DVD), etc.), removable storage, hard drive, portable storage, memory card, memory stick, or any other tangible computer-readable medium.

1.6 "Electronic Format" means deposit by Electronic Delivery.

1.7 "Hardcopy Format" means deposit by Physical Delivery.

1.8 "Deposit Materials" means proprietary technology and other materials identified on Form 2.1 (including passwords if applicable). They are readable and useable in their current form or, if any portion is encrypted, the decryption tools and decryption keys must also be deposited and separately identified as such on Form 2.1 attached; and include a current version of any Source Code for all software licensed under the License Agreement and all updates thereto, together with all documentation necessary to enable a reasonably skilled programmer to maintain such licensed software, and descriptions of all compilers, assemblers and other computer programs and related documentation and other materials that are necessary or useful to use, modify and prepare derivative works of such Source Code. Deposit Materials can be delivered to the ESCROW AGENT by Electronic Delivery or Physical Delivery. Regardless of delivery method, the ESCROW AGENT is not responsible for any inability by a BENEFICIARY, the TECHNOLOGY VENDOR, or any third-party to successfully utilize the Deposit Materials.

1.9 "Notice of Default" means a written or electronic notice issued by a BENEFICIARY to both the TECHNOLOGY VENDOR and the ESCROW AGENT, which complies with §9.14 and further, that identifies the License Agreement and this Escrow Agreement, specifies the Default with reasonable specificity under §3.1, identifies the Deposit Materials and demands the delivery of the Deposit Materials (or an archived copy thereof) to

the BENEFICIARY that submitted the Notice of Default.

- 1.10 "Updates" mean any release, improvement, revision, enhancement, update, or module generally made available by the TECHNOLOGY VENDOR for a Program. Unless otherwise specified by the TECHNOLOGY VENDOR, each BENEFICIARY will have access to all Updates.
- 1.11 "License Agreement" means the agreement between each BENEFICIARY and TECHNOLOGY VENDOR identified in the Recitals above.

2. DEPOSIT OF DEPOSIT MATERIALS

2.1 Upon execution of this Agreement, the TECHNOLOGY VENDOR agrees to deposit as required by this Agreement and the ESCROW AGENT agrees to accept the Deposit Materials for the licensed Program(s) as listed in Form 2.1, attached hereto and made a part hereof. In addition, from time to time hereafter, the TECHNOLOGY VENDOR must deposit with the ESCROW AGENT all necessary and appropriate improvements, revisions, enhancements, or updates for the Deposit Materials so that the Deposit Materials will correspond with the Programs actually distributed to the BENEFICIARY or BENEFICIARIES as listed in Escrow Form 2.2, each BENEFICIARY designated on a separate form. This obligation to update on behalf of the TECHNOLOGY VENDOR is on-going without any request or intervention from the ESCROW AGENT.

2.2 The TECHNOLOGY VENDOR represents and warrants that:

- 2.2.1 The TECHNOLOGY VENDOR owns free and clear title to the items listed in Form 2.1 attached hereto and which comply with the definition of Deposit Materials as defined in §1.8 of this Agreement and constitutes the Deposit Materials and documentation of the licensed Program(s) subject to the License Agreement.
- 2.2.2 The Deposit Materials delivered to the ESCROW AGENT are in a form suitable for reproduction by computer and/or photocopy equipment.
- 2.2.3 The Deposit Materials initially delivered to the ESCROW AGENT include all necessary materials to permit a reasonably skilled

third party programmer to recreate executable version(s) of licensed Program(s) from the Source Code (if applicable).

2.2.4 The Deposit Materials are not subject to any lien or other encumbrance, and any liens or encumbrances made after the execution of this Agreement will not prohibit, limit, or alter the rights and obligations of the ESCROW AGENT under this Agreement.

2.3 The TECHNOLOGY VENDOR covenants that:

2.3.1 The TECHNOLOGY VENDOR shall notify each BENEFICIARY (either hardcopy or electronically) within ten (10) days of its intended deposits of updates, enhancements or other modifications to the Deposit Materials escrowed with the ESCROW AGENT.

2.3.2 With regard to Deposit Materials, to the extent possible, the TECHNOLOGY VENDOR will conspicuously label as "Source Code" both initial and subsequent deliveries of Source Code.

2.3.3 The TECHNOLOGY VENDOR will complete Form 2.1 and submit both it and the original, along with revised, updated or improved copies of the Deposit Materials to the ESCROW AGENT. Additionally, the TECHNOLOGY VENDOR will simultaneously send a copy of Form 2.1 to each BENEFICIARY when the foregoing is sent to the ESCROW AGENT.

2.3.4 The TECHNOLOGY VENDOR will promptly supplement the Deposit Materials with all revisions, corrections, enhancements, or other changes so that the Deposit Materials constitute a human readable program for the current release of the licensed Program to which this agreement relates.

2.3.5 The TECHNOLOGY VENDOR will both initially and in subsequent deliveries of Deposit Materials to the ESCROW AGENT deliver all necessary materials to permit a reasonably skilled third party programmer to recreate executable version(s) of licensed Program(s) from the Deposit Materials.

- 2.3.6 Upon request of a BENEFICIARY, the TECHNOLOGY VENDOR must verify and certify that the Deposit Materials deposited accurately and completely comprise the Source Code and related documentation needed to support the current version(s) of the Software. The TECHNOLOGY VENDOR and the BENEFICIARY will agree upon a mutually acceptable protocol for this verification and certification and the ESCROW AGENT will play no part in this protocol, other than providing a current copy of the Deposit Materials to a mutually designated location identified by both the TECHNOLOGY VENDOR and the BENEFICIARY as per the guidelines provided in Exhibit C.
- 2.4 The ESCROW AGENT covenants that:
- 2.4.1 The ESCROW AGENT will issue to the TECHNOLOGY VENDOR and each BENEFICIARY a hardcopy or electronic receipt for the initial Deposit Materials and for each subsequent deposit in a manner consistent with §9.14 (updated as appropriate). The ESCROW AGENT will also attempt to issue a receipt by electronic communication to the email addresses (updated as appropriate) identifying the Deposit Materials with such indicia as provided by the TECHNOLOGY VENDOR. Such receipt verifies a delivery to ESCROW AGENT but not a verification of the contents of initial Deposit Materials and/or for each subsequent deposit. The ESCROW AGENT is not responsible for any inability by a BENEFICIARY, the TECHNOLOGY VENDOR, or any third-party to successfully utilize the Deposit Materials.
- 2.4.2 The ESCROW AGENT will use its best efforts for the storage, maintenance and safety of the Deposit Materials as used in the industry provided to the ESCROW AGENT by Physical Delivery or Electronic Delivery.
- 2.4.3 The Deposit Materials provided to the ESCROW AGENT by Physical Delivery will be stored, maintained and preserved in a secure and climatized storage facility containing, at a minimum, the following:
- 2.4.3.1 Certified Halon fire suppression system;
- 2.4.3.2 Computer-controlled humidity and temperature levels;
- 2.4.3.3 Vault and building monitored by 24-hour surveillance and security systems;
- 2.4.3.4 Key punch access restricting access throughout the vault; and
- 2.4.3.5 Air filtration system.
- 2.4.4 The Deposit Materials provided to the ESCROW AGENT by Electronic Delivery will be stored, maintained and preserved having, at a minimum, the following:
- 2.4.4.1 File encryption using applicable and appropriate standards. Encryption for storage is applied after files are uploaded;
- 2.4.4.2 Data storage over several large-scale data centers throughout the world. Location of such centers is limited to those with a legitimate business need to have such information about the actual location of such centers;
- 2.4.4.3 Protection against network security issues, e.g., Distributed Denial of Service (DDoS) attacks, Man in the Middle (MITM) attacks, and packet sniffing; and
- 2.4.4.4 Redundant backups for data over multiple locations.
- 2.4.5 The ESCROW AGENT will hold the Deposit Materials free of access of any other person unless §3.0 Defaults and Release from Escrow, and §4.0 Disputes, have been satisfied.
- 2.5 Each BENEFICIARY and the TECHNOLOGY VENDOR both acknowledge and agree that:
- 2.5.1 The ESCROW AGENT has no duty to verify that the TECHNOLOGY VENDOR has appropriately provided Deposit Materials as required by this Agreement and the TECHNOLOGY VENDOR has thirty (30) days from the Effective Date of this Agreement to provide the Deposit Materials. Should the TECHNOLOGY VENDOR fail to provide the required Deposit Materials within this time period, the ESCROW AGENT will provide one curative notice to the TECHNOLOGY VENDOR (with a copy to any named BENEFICIARY) which provides an additional ten (10) business days ("Deposit

Curative Period”) from the date of the Notice to supply the Deposit Materials. If the TECHNOLOGY VENDOR fails to provide the Deposit Materials within this Deposit Curative Period, the ESCROW AGENT may in its absolute discretion, treat this Agreement as terminated unless both the TECHNOLOGY VENDOR and each BENEFICIARY mutually agree in writing to a longer period of time. If no Deposit Material(s) is/are received within one year from the Effective Date of this Agreement, this Agreement is terminated without any further action from the ESCROW AGENT.

2.5.2 This Agreement does not transfer the TECHNOLOGY VENDOR’s right, title or interest in the Deposit Materials or its related documentation to a BENEFICIARY and the TECHNOLOGY VENDOR may at its sole discretion except as limited by the License Agreement, own, possess and secure the original Deposit Materials.

3. DEFAULTS AND RELEASE FROM ESCROW

3.1 Any of the following will constitute a Default by the TECHNOLOGY VENDOR of its obligation and responsibilities to a BENEFICIARY or BENEFICIARIES.

3.1.1 The TECHNOLOGY VENDOR is unable to correct any Defect (as such term is defined in the License Agreement) in the Program which prevents it from functioning in accordance with the applicable specifications, documentation, performance criteria and other warranties and descriptions provided in the License Agreement within sixty days after a BENEFICIARY has notified the TECHNOLOGY VENDOR of such failure, specifying in reasonable detail the respects in which the program fails to perform.

3.1.2 The TECHNOLOGY VENDOR is unable to discharge any of its maintenance obligations to the licensed Program in accordance with the warranties or other standards for such maintenance set forth in either the License Agreement or, if applicable, a written software maintenance agreement which may then be in effect between the TECHNOLOGY VENDOR and a BENEFICIARY within sixty days after the BENEFICIARY’S notice to the TECHNOLOGY

VENDOR specifying in reasonable detail the respects in which the program is not being properly maintained.

3.1.3 A BENEFICIARY has reasonable cause to believe that any one of the following events will cause the TECHNOLOGY VENDOR to fail to meet its warranty and maintenance obligations:

- 3.1.3.1 insolvency;
- 3.1.3.2 general assignment for benefit of creditors;
- 3.1.3.3 receiver appointment;
- 3.1.3.4 assets become subject to insolvency proceeding;
- 3.1.3.5 wind-up or business liquidation;
- 3.1.3.6 death of key programmers utilized by the TECHNOLOGY VENDOR;
- 3.1.3.7 bankruptcy;
- 3.1.3.8 bankruptcy proceeding; or
- 3.1.3.9 assets become subject to bankruptcy proceeding.

3.1.4 On the alleged happening of one or more Events of Default above, a BENEFICIARY must give electronic or written Notice of Default as provided by this Agreement to both the ESCROW AGENT and the TECHNOLOGY VENDOR of that alleged Default as identified by the BENEFICIARY. The Notice of Default shall be labeled a “Notice of Default,” shall identify the License Agreement and this Escrow Agreement, shall specify the nature of alleged Default, shall identify the Deposit Materials with reasonable specificity, and shall demand the delivery of a complete copy of the Deposit Materials to the BENEFICIARY.

3.1.5 In the event that more than one BENEFICIARY exists, each BENEFICIARY is required to file a separate Notice of Default. A Notice of Default shall not be valid for more than one BENEFICIARY.

3.1.6 Upon receipt of the Notice of alleged Default and payment corresponding to the Release Request Fee as detailed in Exhibit B, attached hereto and incorporated by reference as “PRICE SCHEDULE,” the ESCROW AGENT shall likewise send a copy of the Notice of Default to the TECHNOLOGY

VENDOR by certified or registered mail, return receipt requested to the address identified in §9.14 (as updated). If the TECHNOLOGY VENDOR desires to dispute the Notice of alleged Default, the TECHNOLOGY VENDOR shall, within ten business days after receipt thereof, deliver to the ESCROW AGENT and BENEFICIARY in the manner specified in §9.14, an electronic or hardcopy affidavit or other sworn statement stating that in the TECHNOLOGY VENDOR'S view, no Default as alleged, has occurred.

- 3.1.7 If the ESCROW AGENT does not receive an electronic or hardcopy affidavit or other sworn written statement from the TECHNOLOGY VENDOR stating that the TECHNOLOGY VENDOR does not believe there has been a Default, within the time permitted by §3.1.6, the ESCROW AGENT is authorized and directed by TECHNOLOGY VENDOR to deliver the Deposit Materials to the BENEFICIARY that filed the Notice of Default, even if no response is received by the ESCROW AGENT from the TECHNOLOGY VENDOR within the designated time which expires at 5:00 p.m., Eastern Time (either EDT or EST as applicable). The ESCROW AGENT shall provide the Deposit Materials to the BENEFICIARY in the same medium as delivered to the ESCROW AGENT by the TECHNOLOGY VENDOR and by the same delivery method (Physical Delivery or Electronic Delivery) as delivered to the ESCROW AGENT by the TECHNOLOGY VENDOR, except that ESCROW AGENT reserves the right to provide an archival copy of the Deposit Materials to the BENEFICIARY in the event that TECHNOLOGY VENDOR delivers the Deposit Materials to ESCROW AGENT via Electronic Delivery. The ESCROW AGENT'S responsibility for the Deposit Materials ceases upon release of the Deposit Materials to the BENEFICIARY, and the ESCROW AGENT is not responsible for any inability by the BENEFICIARY to successfully utilize the Deposit Materials after release, including a lack of an encryption password (if not originally provided to the ESCROW AGENT by the TECHNOLOGY VENDOR), or the validity of an encryption password (if originally

provided to the ESCROW AGENT by the TECHNOLOGY VENDOR).

- 3.1.8 Unless otherwise provided in the License Agreement, upon release of the Deposit Materials to a requesting BENEFICIARY, that BENEFICIARY shall have the right to use the Deposit Materials for the sole purpose of continuing the benefits afforded to the BENEFICIARY by the License Agreement. The BENEFICIARY shall be obligated to maintain the confidentiality of the released Deposit Materials and even though the Deposit Materials have been released or otherwise, this Agreement will not constitute a termination, renewal, or otherwise of the License Agreement.
- 3.1.9 On the alleged happening of one or more Events of Default involving bankruptcy, a BENEFICIARY shall give electronic or written Notice of Default as provided by this Agreement to both the ESCROW AGENT and the Trustee in Bankruptcy for the TECHNOLOGY VENDOR of that Default. The Notice of Default shall be labeled a "Notice of Default," shall identify the Trustee in Bankruptcy, the License Agreement and this Escrow Agreement, shall specify the nature of Default, and shall identify the Deposit Materials with reasonable specificity.
- 3.1.10 Upon receipt of the Notice of alleged Default under one or more Events of Default involving bankruptcy, the ESCROW AGENT shall likewise send a physical copy of the Notice of Default to the Trustee in Bankruptcy of the TECHNOLOGY VENDOR as identified by the BENEFICIARY by certified or registered mail, return receipt requested. The ESCROW AGENT will abide and enforce any order, instruction, or request made by the Trustee in Bankruptcy of the TECHNOLOGY VENDOR regarding to the Deposit Materials. The ESCROW AGENT'S responsibility for the Deposit Materials ceases upon enforcement of any order, instruction, or request made by the Trustee in Bankruptcy of the TECHNOLOGY VENDOR, and the ESCROW AGENT is not responsible for any inability by the BENEFICIARY, the TECHNOLOGY VENDOR, or any Third-Party to successfully utilize the Deposit Materials after release.

- 3.1.11 In the event that the ESCROW AGENT becomes insolvent, makes a general assignment for the benefit of creditors, or suffers or permits the appointment of a receiver for its business, where its assets become subject to any proceeding under any insolvency law, domestic or foreign, or has wound up or liquidated its business, the ESCROW AGENT shall notify both the BENEFICIARY or BENEFICIARIES and TECHNOLOGY VENDOR of the occurrence by hardcopy or electronic notification. The BENEFICIARIES and TECHNOLOGY VENDOR will each use its best efforts to find another suitable party to serve as a replacement ESCROW AGENT.
- 3.2 The TECHNOLOGY VENDOR and each BENEFICIARY expressly agree that the ESCROW AGENT is entitled to rely upon the veracity of any affidavit or other sworn electronic or hardcopy statement and is under no obligation to perform any independent verification of the same. The ESCROW AGENT is equally entitled to rely upon the veracity of any written notice or other sworn statement regarding the choice of the default event by either the TECHNOLOGY VENDOR or BENEFICIARY or BENEFICIARIES or whether the alleged default falls within the enumerated categories.
- 3.3 The ESCROW AGENT has no obligation to release the copy of the Deposit Materials to any third-party that is not a Party to this Agreement except as required by operation of law or court order.
- 3.4 The TECHNOLOGY VENDOR acknowledges that the ESCROW AGENT has the right to maintain the Deposit Materials in the ESCROW AGENT'S possession and to provide such Deposit Materials to a BENEFICIARY or BENEFICIARIES for the fulfillment of this Agreement between the TECHNOLOGY VENDOR and a BENEFICIARY or BENEFICIARIES.
4. DISPUTES
- 4.1 If the TECHNOLOGY VENDOR provides to the ESCROW AGENT and a BENEFICIARY within the time permitted by §3.1.6 an affidavit or other sworn statement in response to the Notice of Default disputing the existence of any Default, the ESCROW AGENT will not release the Deposit Materials until it receives joint instructions from the TECHNOLOGY VENDOR and a BENEFICIARY, or a copy of a final non-appealable U.S. court order, or binding arbitration award requiring or authorizing such release, unless such judicial order or binding arbitration award is under seal, in which case, the TECHNOLOGY VENDOR and BENEFICIARY will provide a joint statement to that effect to the ESCROW AGENT and provide authorization to provide a release to the appropriate Party.
- 4.2 All Parties agree that the ESCROW AGENT is directed to act in good faith reliance of any representation made in accordance with this Agreement and is completely protected from any adverse results or consequences of such actions even if a court should later determine their rights differently.
5. PAYMENT AND INDEMNIFICATION OF THE ESCROW AGENT
- 5.1 The ESCROW AGENT must be paid for its services in accordance with Exhibit B, attached hereto and titled "PRICE SCHEDULE." The ESCROW AGENT is not required to perform any service, including release of any Deposit Materials, unless the payment for such service and any outstanding balances owed to the ESCROW AGENT by either the TECHNOLOGY VENDOR or the BENEFICIARIES have been paid in full. Initial fees are due upon receipt of a signed contract. This Escrow Agreement is only effective upon receipt of all required payments and signatures and is terminated as to any Party if payment is not received within the Curative Payment Period defined herein below. Any payment which is owed and effected within the Curative Payment Period is automatically increased by an additional ten percent (10%) over the owed amount. If this increased amount is not paid-in-full, then this Agreement is terminated as to the Party making insufficient payment.
- 5.2 The "PRICE SCHEDULE" attached hereto as Exhibit B may be modified and updated at the discretion of the ESCROW AGENT. The ESCROW

AGENT shall provide 90 days' electronic notice to the TECHNOLOGY VENDOR and the BENEFICIARIES in the event the "PRICE SCHEDULE" is modified or updated.

5.3 If the TECHNOLOGY VENDOR or a BENEFICIARY, as the case may be, fails to pay an electronic or written invoice addressed to it for services under this Agreement within 30 days of its issue, the ESCROW AGENT reserves the right to alert both Parties by electronic notice to pay the outstanding invoice(s) within 30 days ("Curative Payment Period").

5.3.1 If a specific BENEFICIARY fails to pay the outstanding invoice upon the expiration of the Curative Payment Period with notice given to both Parties and the TECHNOLOGY VENDOR does not pay the specific BENEFICIARY's outstanding invoice during the Curative Payment Period, this Agreement will automatically terminate to the extent it relates to the delinquent BENEFICIARY.

5.3.2 If the TECHNOLOGY VENDOR fails to pay the outstanding invoice upon the expiration of the Curative Payment Period with notice given to all the Parties and the BENEFICIARY or BENEFICIARIES does/do not pay the TECHNOLOGY VENDOR's outstanding invoice during the Curative Payment Period, this Agreement will automatically and immediately terminate and all Deposit Materials previously deposited will be returned to the TECHNOLOGY VENDOR, even if no written or electronic response has been received from the Parties. If no written or electronic response has been received from the TECHNOLOGY VENDOR, then the Deposit Materials will be destroyed.

5.4 All monies received by the ESCROW AGENT are NON-REFUNDABLE payments.

5.5 The ESCROW AGENT is not obligated or required to examine or inspect the Deposit Materials. The ESCROW AGENT'S obligation is limited to providing the same degree of care for the Deposit Materials as it maintains for its valuable documents and those of its customers.

5.6 The ESCROW AGENT may rely upon representations made by individuals of the respective BENEFICIARIES and the

TECHNOLOGY VENDOR of their representative capacity within the respective Party and authority to act on behalf of the respective Party. The ESCROW AGENT shall be protected from actions by each BENEFICIARY and/or the TECHNOLOGY VENDOR in acting upon any notice, request, waiver, consent, receipt, or other paper or document furnished to it not only in assuming its due execution, but also as to the truth of any information contained therein.

6. OWNERSHIP OF DEPOSIT MATERIALS

6.1 The TECHNOLOGY VENDOR shall be the legal owner of the escrowed Deposit Materials and the documentation and other information embodied in such and at all times, subject only to the claims of a BENEFICIARY as described herein.

6.2 The ESCROW AGENT, the TECHNOLOGY VENDOR and a BENEFICIARY or BENEFICIARIES recognize and acknowledge that ownership of the Deposit Materials itself and any programmer documentation (together with all copyright rights and proprietary rights therein) shall continue as belonging to the TECHNOLOGY VENDOR at all times.

6.3 The ESCROW AGENT has the right to make copies or reproduce the Deposit Materials only as is reasonably necessary to perform or fulfill the terms of this Agreement. In the event that Deposit Materials are provided to the ESCROW AGENT by Electronic Delivery, the ESCROW AGENT reserves the right to produce one archival physical copy and will follow the procedures for storing the physical copy as outlined within this Agreement.

7. TERM AND TERMINATION

7.1 The initial term of this Agreement is for a period of one (1) year. Thereafter, this Agreement shall automatically renew from year-to-year and the annual renewal fees in accordance with Exhibit B, attached hereto and titled, "PRICE SCHEDULE" will be due upon the anniversary of the TECHNOLOGY VENDOR Effective Date or the BENEFICIARY Effective Date of this Agreement, the ESCROW AGENT providing both the TECHNOLOGY VENDOR and each BENEFICIARY at least thirty (30) days physical or electronic advance notice of the renewal fees, unless:

7.1.1 an officer of the TECHNOLOGY VENDOR and an officer of a BENEFICIARY jointly

instruct the ESCROW AGENT in writing that the Agreement is terminated; or

7.1.2 the ESCROW AGENT instructs the TECHNOLOGY VENDOR and a BENEFICIARY pursuant to the provisions of §9.14 that the Agreement is terminated for nonpayment in accordance with §5.1; or

7.1.3 the ESCROW AGENT reserves the right to terminate this Agreement, for any reason, other than nonpayment, by providing the TECHNOLOGY VENDOR and a BENEFICIARY ninety (90) days' written notice of its intent to terminate this Agreement.

7.2 Upon termination of this Agreement or if a copy of the Deposit Materials is delivered to the BENEFICIARY or BENEFICIARIES pursuant to the Notice of Default procedures set forth herein, the ESCROW AGENT'S duties with respect to such Deposit Materials shall terminate on the date of such delivery.

7.3 Upon termination of this Agreement, the obligations of confidentiality with regards to the Deposit Materials, obligations of the TECHNOLOGY VENDOR and each BENEFICIARY to pay any fees and expenses due to the ESCROW AGENT, and all terms of §9 "GENERAL TERMS" of this Agreement survive and remain binding on the TECHNOLOGY VENDOR, each BENEFICIARY, and the ESCROW AGENT.

8. CONSENT TO ELECTRONIC COMMUNICATION

8.1 Unless expressly stated, all communications between the Parties will be electronic to the email addresses provided below. It is expressly understood by the Parties that each Party will maintain and monitor at least one email address provided below and provide the ESCROW AGENT with an updated email address should the defined address below, be changed or modified.

8.1.1 ESCROW AGENT:

Email: dbaka@nationalsoftwareescrow.com

Backup Email: dbaka@twc.com

8.1.2 TECHNOLOGY VENDOR:

Email:

Backup Email:

8.1.3 EACH BENEFICIARY:

Email Addresses documented in each BENEFICIARY'S ESCROW FORM 2.2

8.2 Each Party expressly agrees to maintain and update the above email addresses. The ESCROW AGENT is not liable under any theory, for missed electronic communications pursuant to this Agreement.

9. GENERAL

9.1 Except as provided in this Agreement, the ESCROW AGENT agrees that it shall not divulge or disclose or otherwise make available to any third person whatsoever, or make any use whatsoever of the Deposit Materials without the express prior consent of the TECHNOLOGY VENDOR, by any form of communication identified in §9.14.

9.2 The ESCROW AGENT shall not, by reason of its execution of this Agreement, assume any responsibility or liability for any transactions between the TECHNOLOGY VENDOR and a BENEFICIARY other than for the performance of its obligations with respect to the Deposit Materials held by it in accordance with this Agreement. The Party on whose behalf, or pursuant to whose directions the ESCROW AGENT acts, shall, indemnify and hold harmless the ESCROW AGENT from any and all liability, damage, costs or expenses, including reasonable attorney's fees, which may be sustained or incurred by the ESCROW AGENT as a result of taking of such action.

9.3 THE ESCROW AGENT HEREBY DISCLAIMS THE UNIFORM COMMERCIAL CODE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY AND ALL OTHER EXPRESS OR IMPLIED WARRANTIES OF ANY NATURE OR KIND.

9.4 The ESCROW AGENT'S liability to the TECHNOLOGY VENDOR and a BENEFICIARY shall be limited to the return of the Deposit Materials to whichever Party is entitled to it pursuant to this Agreement, unless destroyed pursuant to §5.3.2 or performing its obligations under §2.4 of this Escrow Agreement. IN NO EVENT SHALL THE ESCROW AGENT BE LIABLE FOR PUNITIVE, CONSEQUENTIAL OR OTHER DAMAGES TO EITHER THE TECHNOLOGY VENDOR OR A BENEFICIARY OR BENEFICIARIES. DAMAGES SHALL BE LIMITED TO THE SUM OF ALL ESCROW

FEES PREVIOUSLY PAID BY THE TECHNOLOGY VENDOR AND A BENEFICIARY UNDER THE TERMS OF THIS ESCROW AGREEMENT.

- 9.5 This Escrow Agreement shall not be waived, amended, or modified except by written or electronic agreement of all of the Parties hereto. Any invalidity in whole or in part of any provision of this Escrow Agreement will not affect the validity of any of its other provisions.
- 9.6 All Parties to this Agreement represent and warrant that the execution, delivery and performance of this Agreement have been duly authorized and signed by a person approved to sign on behalf of the respective Party as named.
- 9.7 All disputes involving a State cause of action against the ESCROW AGENT or to which the ESCROW AGENT is a Party which arise under this Agreement must be filed in the state court located in Cuyahoga County, Ohio, which shall have exclusive jurisdiction over state law matters. The TECHNOLOGY VENDOR and each BENEFICIARY expressly waive any and all objection to personal jurisdiction in this venue. The Parties irrevocably submit to such state court's jurisdiction hereby waiving any claim of inconvenient forum. Notwithstanding the foregoing and §9.8 below, jurisdiction, venue and forum (mediation, arbitration, litigation, administrative proceeding) etc. for any disputes solely as between the TECHNOLOGY VENDOR and each BENEFICIARY (and specifically excluding the ESCROW AGENT) shall be subject to the terms of the License Agreement.
- 9.8 All disputes involving a Federal cause of action arising under this Agreement must be filed in the Northern District of Ohio, which shall have exclusive jurisdiction over federal matters. The TECHNOLOGY VENDOR and each BENEFICIARY expressly waive any and all objections to personal jurisdiction in this venue. The Parties irrevocably submit to such federal court's jurisdiction hereby waiving any claim of inconvenient forum.
- 9.9 The ESCROW AGENT shall not be liable for any failure to perform its obligations in connection with this Agreement if such failure results from any act of God, riot, war, civil unrest, flood, earthquake, or other cause beyond such Party's reasonable control including any mechanical, electronic, Internet, server, Internet Service Provider (ISP), or communications failure.
- 9.10 This Agreement controls the Parties' respective obligations concerning only the subject matter hereof. To the extent of a conflict between the License Agreement and this Agreement concerning the ESCROW AGENT's duties, this Agreement controls. And, to the extent this Agreement modifies the TECHNOLOGY VENDOR's and each BENEFICIARY's respective obligations under the License Agreement concerning an escrow arrangement of the Deposit Materials and related documentation, then this Agreement also controls.
- 9.11 The validity and effect of this Agreement and the rights and obligations of the Parties hereto shall be construed and determined in accordance with the laws of the State of Ohio excluding its conflicts of law provisions and including the Uniform Commercial Code of the Sale of Goods as adopted in Chapter 1302 of the Ohio Revised Code.
- 9.12 This Agreement shall be binding upon and shall inure to the benefit of the transferees, successors and assigns of the Parties including, but not limited to, any company or corporation with which a Party may merge or consolidate. In the event of a permitted transfer of this Agreement by a Party, the transferring Party is required to notify the ESCROW AGENT and the TECHNOLOGY VENDOR or BENEFICIARY or BENEFICIARIES, whichever is appropriate, of the transfer of this asset to a transferee within ten (10) days of the effective date of the transfer. If no notice is provided, then the ESCROW AGENT is entitled to rely upon providing communications to the Party pursuant to §9.14.
- 9.13 Numbers and titles to paragraphs hereof are for information purposes only and, where inconsistent with the text, are to be disregarded.
- 9.14 All notices, affidavits, sworn statements or all other communications required or which may be given pursuant to this Agreement shall be in writing and shall be delivered personally, faxed with a copy sent contemporaneously by first class mail, or sent by certified, registered, or express mail, postage prepaid, or electronically to the last email address of record, to the appropriate address set forth below, or as later updated by a Party in a manner complying with this §9.14. The TECHNOLOGY VENDOR, each BENEFICIARY and the ESCROW AGENT are REQUIRED to update all contact information pursuant to this section within thirty (30) days

of any change. Failure to comply with this update provision will relieve the ESCROW AGENT of any liability for any notices, affidavits, sworn statements or all other communications required or which may be given pursuant to this Agreement which were not received by the Party failing to comply with this section.

9.15 The failure of either Party to assert a right hereunder or to insist upon compliance with any term or condition of this Agreement will not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition by the other Party.

Draft

ACKNOWLEDGED AND ACCEPTED

NATIONAL SOFTWARE ESCROW, INC. ("ESCROW AGENT")

Address: 8225 Brecksville Road, Building 3, Suite 105, Brecksville, Ohio 44141
To the Attention of:

Signed: _____

By: _____

Title: _____

Email: _____

("TECHNOLOGY VENDOR")

Address:
To the Attention of:

Signed: _____

By: _____

Title: _____

Email: _____

Draft

DEPOSIT MATERIALS IDENTIFICATION AND CERTIFICATION

ESCROW FORM 2.1

Program	Account #	Release, Version Info	Format	
(1)			Electronic []	Hardcopy []
(2)			Electronic []	Hardcopy []
(3)			Electronic []	Hardcopy []
(4)			Electronic []	Hardcopy []

DEPOSIT MATERIAL INFORMATION:

Is the media or are any of the files encrypted? Yes / No If yes, please include any passwords and the decryption tools.

Encryption tool name _____

Version _____

Encryption Password: _____

Hardware required _____

Software required _____

Other required information _____

("TECHNOLOGY VENDOR")

Signed: _____

By: _____

Title: _____

Date: _____

* Unless ESCROW AGENT is instructed otherwise, the Deposit Materials identified in this Escrow Form 2.1 relate to ALL BENEFICIARIES enrolled to this Agreement.

** Upon receipt of Deposit Materials submitted by Physical Delivery, National Software Escrow, Inc. will open package containing Deposit Materials (unless EXPLICITLY identified and agreed upon by both the TECHNOLOGY VENDOR and BENEFICIARY as being a "sealed package"), in order to perform a visual inspection verifying that Deposit Materials exist and are not damaged. Photocopy of tangible medium or media will be made.



**"ADDITIONAL BENEFICIARY" REGISTRATION
ESCROW FORM 2.2**

TECHNOLOGY VENDOR, BENEFICIARY and NATIONAL SOFTWARE ESCROW, INC. hereby acknowledge that _____ is a BENEFICIARY referred to in the Master Software Escrow Agreement # _____ originally made effective _____ with NATIONAL SOFTWARE ESCROW, INC. as the ESCROW AGENT and _____ as the TECHNOLOGY VENDOR. **BENEFICIARY hereby agrees to be bound by all provisions of such Agreement.**

TECHNOLOGY VENDOR hereby enrolls BENEFICIARY to the following account(s):

<u>Account Name</u> _____	<u>Account Number</u> _____ TBD
------------------------------	---

Notices and communications to BENEFICIARY should be addressed to:	Invoices corresponding to BENEFICIARY'S fee should be addressed to:
Company Name:	Company Name:
Address:	Address:
Designated Contact:	Designated Contact:
Telephone:	Telephone:
Facsimile:	Facsimile:
E-mail:	E-mail:

The "TECHNOLOGY VENDOR" grants the "ESCROW AGENT" the irrevocable right to copy or reproduce the "DEPOSIT MATERIALS" being held under the terms of this Escrow Agreement, to be used only for the completion of the terms of this Escrow Agreement, should the need occur. The "TECHNOLOGY VENDOR" by signing below, authorizes the "ESCROW AGENT" to issue a copy of the Escrow Agreement to the above named "BENEFICIARY", granting all protection contained in the original agreement.

TECHNOLOGY VENDOR
By: _____
Title: _____
Date: _____

NATIONAL SOFTWARE ESCROW INC.
By: _____
Title: _____
Date: _____

BENEFICIARY
By: _____
Title: _____
Date: _____

- Each BENEFICIARY Effective Date is defined as the later of the two events described below:
- (1) Receipt of Escrow Form 2.2
(a) Receipt Date: _____
 - (2) Receipt of 1st year non-refundable payment of a BENEFICIARY Escrow Fee(s) by the ESCROW AGENT
(a) Receipt Date: _____

Based upon the later of the Receipt Dates above, the dates within the thirty (30) day window (and any extensions thereof), the identified BENEFICIARY Effective Date is _____.

EXHIBIT B
PRICE SCHEDULE*

TECHNOLOGY VENDOR Fees:

Annual Escrow Fee per Deposit Materials	1st Year	\$650.00**
	Renewal Fee	\$550.00***

BENEFICIARY Fees:

Annual Escrow Fee per Deposit Materials	1st Year	\$650.00**
	Renewal Fee	\$550.00***

An additional \$250.00 will be added to the TECHNOLOGY VENDOR'S 1st year fees if substantive modifications are made to this Escrow Agreement, the determination being made in the sole discretion of the ESCROW AGENT and communicated to the TECHNOLOGY VENDOR before signatures and fee payments.

An additional \$250.00 will be added to a BENEFICIARY'S 1st year fees if substantive modifications are made to the BENEFICIARY'S Escrow Form 2.2, the determination being made in the sole discretion of the ESCROW AGENT and communicated to the PARTIES before signatures and fee payments.

Miscellaneous Fees:

Update Fees per change (Includes notification to BENEFICIARY)	\$75.00**
Release Request - Per BENEFICIARY (BENEFICIARY Request for Release Based Upon Terms and Conditions of Escrow Agreement)	\$250.00**

* See §5.1 for late payment fees.

** non-refundable fee

*** may be refundable at the discretion of the Escrow Agent



EXHIBIT C

Date:

National Software Escrow, Inc.
Attn: President
8225 Brecksville Road
Building Three, Suite #105
Brecksville, Ohio 44141

Re: Software Escrow # _____ between National Software Escrow, Inc., the ("ESCROW AGENT") and _____, the ("TECHNOLOGY VENDOR") and; _____ ("BENEFICIARY").

Dear National Software Escrow, Inc.:

Pursuant to Section 2.3.6 in Software Escrow # _____, the TECHNOLOGY VENDOR and BENEFICIARY hereby authorize National Software Escrow, Inc. ("ESCROW AGENT") to make a copy of the *{Insert Date of Deposit}* Deposit Materials which has been identified by the TECHNOLOGY VENDOR as *{Insert Program Name, Release, Version info, etc.}* and send a copy via Federal Express to *{Insert Company Name}* to be delivered on *{Insert Date}* to the following address:

Company Name
Recipient Name
Address
City, State, Zip
Country
Email Address
Office Phone:
Cell Phone:

Testing of said Deposit Materials will be completed within 10 business days from the date of receipt and that the recipient and/or organization will make no further copies of the Deposit Materials, other than the one permitted for verification purposes and that after the verification purpose is complete, they will destroy any copies made and/or return the copies to National Software Escrow, Inc.

In the event that the Deposit Materials have been identified by the TECHNOLOGY VENDOR as being encrypted, National Software Escrow, Inc. may deliver the encrypted password to _____ by electronic mail to the recipient's email address noted above.

By signing this, both TECHNOLOGY VENDOR and BENEFICIARY agree to this plan, have the capacity to bind their organizations in the manner which they have indicated and request that National Software Escrow, Inc. complete the copy and sending of the Deposit Materials identified above.

Signed by:

("TECHNOLOGY VENDOR")

Address:
To the Attention of:

Signed: _____

By: _____

Title: _____

Email: _____

("BENEFICIARY")

Address:
To the Attention of:

Signed: _____

By: _____

Title: _____

Email: _____

Draft