

## ESCROW AGREEMENT

THIS ESCROW AGREEMENT (the "Agreement") is made as of this *[Date]* day of *[Month]*, 2017 (the "Effective Date"), among \_\_\_\_\_ ("ESCROW AGENT"), \_\_\_\_\_ ("LICENSOR"), and the State of Washington acting by and through the Administrative Office of the Courts ("LICENSEE").

### RECITALS

LICENSOR and LICENSEE have entered into a System Contract dated the Effective Date (the "System Contract") to license certain Third Party Software (as defined in the System Contract) (the "Software") upon specified terms and conditions; and

To assure the continued availability and usefulness of such Software, LICENSOR has agreed to establish and maintain in escrow with ESCROW AGENT the Software source code and certain documentation therefor.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants contained herein and other good and valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

#### 1. Deposit in Escrow.

**1.1.** Within 30 days of the Effective Date as defined in the System Contract, LICENSOR shall deliver to ESCROW AGENT a sealed package containing the same current version of the source code for the Software which is owned by third parties, licensed to LICENSEE by LICENSOR, and is described as the Proprietary Software in the System Contract, programmer notes, its database schema and architecture, and other materials described in Schedule 1 to this Agreement (collectively, the "Source Materials"). LICENSOR shall identify each item in said package and certify the completeness and accuracy of the Source Materials in a letter forwarding the same to ESCROW AGENT, with a copy of each letter to LICENSEE. Immediately upon receipt of the package, ESCROW AGENT shall give notice to LICENSEE of such receipt.

**1.2.** LICENSOR shall deliver revisions of the Source Materials, including the Source Code for the Software, to ESCROW AGENT as and when corresponding revisions of the Executable Code for the Software are delivered to LICENSEE in accordance with the System Contract. At such time as any modifications or revisions to the Source Materials are deposited with ESCROW AGENT, LICENSOR shall give written notice of such deposits to LICENSEE.

**1.3.** ESCROW AGENT shall acknowledge receipt of all revisions of or additions to the Source Materials by sending written acknowledgment thereof to both LICENSOR and LICENSEE.

**1.4.** Upon receipt of a new revision, ESCROW AGENT agrees to return to LICENSOR all such Source Materials from previous revisions as specified by LICENSOR in writing to ESCROW AGENT.

## **2. Release from Escrow.**

**2.1.** ESCROW AGENT shall seven days following receipt of an affidavit, which is from an officer of LICENSEE to ESCROW AGENT sent via certified mail with return receipt requested, and which states that one of the following events has occurred, proceed in accordance with the procedure described in Sections 2.3 through 2.7 below if:

2.1.1 LICENSOR has made an assignment for the benefit of creditors; or

2.1.2 LICENSOR institutes or becomes subject to a liquidation or bankruptcy proceeding of any kind; or

2.1.3 A receiver or similar officer has been appointed to take charge of all or part of LICENSOR's assets; or

2.1.4 LICENSOR terminates its maintenance and support services for LICENSEE for the Software or breaches its support and maintenance obligations for the Software for LICENSEE, whether due to its ceasing to conduct business generally or otherwise; or

2.1.5 LICENSOR is acquired by or merges with another party, or there is otherwise a change in control (i.e., the ability, whether directly or indirectly, to direct the affairs of another by means of ownership, contract or otherwise) of Contractor to another party, including without limitation by asset or stock sale, merger, transfer of ownership, divestiture, spin-out, spin-off, or any other way; or

2.1.6 LICENSOR fails to make timely payments of fees and other costs required under this Agreement.

**2.2.** LICENSEE shall send a copy of the affidavit to LICENSOR via certified mail with return receipt requested, simultaneously with its affidavit to ESCROW AGENT. Upon its receipt of the affidavit as provided above in Section 2.1, ESCROW AGENT shall immediately give written notice to LICENSOR, attaching a copy of the affidavit to the notice, via certified mail with return receipt requested.

**2.3.** Upon receipt of such notices in accordance with Sections 2.1 and 2.2, LICENSOR shall have 30 days to review LICENSEE's affidavit requesting release from escrow as provided for in Section 2.1 above.

**2.4.** If LICENSOR does not give notice to ESCROW AGENT within the 30 days provided in Section 2.3 that LICENSEE's request for release from escrow is contested by LICENSOR, ESCROW AGENT shall automatically release the Source Materials to LICENSEE. The Source Materials shall be used by LICENSEE subject to the System

Contract and solely for support and maintenance for the Software within the provisions of the System Contract. Delivery of the Source Materials to LICENSEE in accordance with provisions hereof shall automatically terminate this Escrow Agreement.

**2.5.** If LICENSOR does give ESCROW AGENT notice within the 30 days provided in Section 2.3 that LICENSEE's request for release from escrow is contested by LICENSOR, ESCROW AGENT shall retain the Source Materials in escrow while LICENSOR and LICENSEE either:

2.5.1 Settle the dispute among themselves and jointly give notice to ESCROW AGENT in writing of the result; or

2.5.2 Submit the dispute to the dispute resolution process below for resolution in accordance with the terms of this Agreement.

**2.6.** In the event of litigation, ESCROW AGENT shall dispose of the Source Materials as directed by the court of competent jurisdiction's finding given in writing to all parties.

**2.7.** Each party shall bear its own costs incurred in any litigation as set forth in Section 2.6 above.

### **3. Ownership of Source Material.**

**3.1.** The tangible medium comprising the escrowed Source Materials, but not the source code or technical specifications and other information embodied in such tangible media, shall be in the possession of ESCROW AGENT as soon as such material is received by ESCROW AGENT and at all times until the Source Materials are returned to LICENSOR or to LICENSEE as outlined in Section 2 above .

**3.2.** ESCROW AGENT, LICENSOR, and LICENSEE recognize and acknowledge that ownership of the source code itself shall remain the sole and exclusive proprietary property of LICENSOR at all times and that nothing in this Agreement shall be interpreted to deprive LICENSOR of any right, title or interest in or to the Source Materials.

**3.3.** It is expressly understood and agreed that LICENSEE's right to obtain the source code and other documentation from escrow is subject to the terms described in Section 8 of the System Contract and that LICENSEE shall have no right or claim to LICENSOR's proprietary rights in the Software.

### **4. Storage and Security.**

**4.1.** ESCROW AGENT will act as custodian of the Source Materials until the escrow is terminated. ESCROW AGENT shall establish, under its control, a secure receptacle for the purpose of storing the Source Materials.

**4.2.** The Source Materials deposited with ESCROW AGENT by LICENSOR pursuant to this Escrow Agreement shall remain the exclusive property of the LICENSOR, except as otherwise provided in Section 2.

**4.3.** Except as provided in this Agreement, ESCROW AGENT agrees that:

4.3.1 It shall not divulge, disclose or otherwise make available to any parties other than LICENSOR or LICENSEE, or make any use whatsoever, of the Source Materials;

4.3.2 It shall not permit any person access to the Source Materials, except as may be necessary for ESCROW AGENT's authorized representatives to perform its functions under this Agreement;

4.3.3 Access to the Source Materials by LICENSOR shall be granted by ESCROW AGENT only to those persons duly authorized in writing by a competent officer of LICENSOR or as provided herein; and

4.3.4 Access to the Source Materials shall not be granted without compliance with all security and identification procedures instituted by ESCROW AGENT.

**4.4.** ESCROW AGENT shall, upon LICENSEE's request and pursuant to Section 6.4.2 of the System Contract, verify or determine that the Source Materials deposited with ESCROW AGENT by LICENSOR do, in fact, consist of those items which LICENSOR is obligated to deliver under any agreement.

**4.5.** ESCROW AGENT shall accept, store and deliver the Source Materials deposited with it by LICENSOR, in accordance with the terms and conditions of this Agreement.

**4.6.** If any of the Source Materials held in escrow by ESCROW AGENT shall be attached, garnished or levied upon pursuant to an order of court, or the delivery thereof shall be stayed or enjoined by an order of court, or any other order, judgment or decree shall be made or entered by any court affecting the Source Materials or any part thereof of any act of ESCROW AGENT, ESCROW AGENT is hereby expressly authorized in its sole discretion to obey and comply with all orders, judgments or decrees so entered or issued by any court, without the necessity of inquiring whether such court had jurisdiction, and in case ESCROW AGENT obeys or complies with any such order, judgment or decree, ESCROW AGENT shall not be liable to LICENSEE, LICENSOR or any third party by reason of such compliance, notwithstanding that such order, judgment or decree may subsequently be reversed, modified or vacated.

**5. Termination.** LICENSEE and LICENSOR may terminate this Agreement by mutual written agreement, giving 60 days' notice to ESCROW AGENT. This Agreement may also be terminated in accordance with the terms of Section 2.

- 6. Good Faith Reliance.** ESCROW AGENT shall act in good faith reliance upon any instruction, instrument, or signature believed in good faith to be genuine and may assume that any person purported to give any writing, notice, respect, advice, or instruction in connection with or relating to this Agreement has been duly authorized to do so.
- 7. Fees.** ESCROW AGENT shall be entitled to reasonable compensation for performance of its duties hereunder and for establishment of the escrow described herein. LICENSOR shall pay for the costs to establish, maintain, and verify the escrow described herein.
- 8. Entire Agreement.** Except to the extent this Agreement incorporates by reference specific Sections of or definitions from the System Contract, this Agreement constitutes the entire Agreement among the parties, including the subject matter hereof and shall supersede all previous communications, representations, understandings and agreements, either oral or written between the parties. This Escrow Agreement is intended to be and shall be treated as an agreement separate and distinct from the System Contract.
- 9. Notice.** Notice will be deemed to be given by the parties under the Agreement if in writing and delivered personally or by messenger, by telecopier or facsimile, or mailed by first class, registered, or certified mail, postage prepaid, to the addresses noted below the signatures on the Agreement. Each party will provide notice to the other of changes to such addresses.
- 10. Governing Law.** This Agreement shall be governed by and construed according to the laws of the State of Washington. LICENSOR and ESCROW AGENT consent to personal jurisdiction in that State. The jurisdiction for any action hereunder shall be exclusively in the Superior Court for the state of Washington. The venue of any action hereunder shall be in the Superior Court for Thurston County, Washington.
- 11. Severability.** In the event any of the provisions of this Agreement shall be held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.
- 12. Headings.** The headings in this Agreement do not form a part of it, but are for convenience only and shall not limit or affect the meaning of the provisions.
- 13. System Contract Terms.** Capitalized terms not defined in this Agreement shall have the meanings provided in the System Contract. However, to the extent this Agreement is in conflict with the System Contract, the terms of this Agreement shall prevail.

#### **14. Dispute Resolution.**

**14.1. Good Faith Efforts.** Except for the right of either party to apply to a court of competent jurisdiction for a temporary restraining order or other provisional remedy to preserve the status quo or prevent irreparable harm, the parties agree to attempt in

good faith to promptly resolve any dispute, controversy or claim arising out of or relating to this Agreement, including but not limited to payment disputes, through negotiations between senior management of the parties. If the dispute cannot be resolved within 30 calendar days of initiating such negotiations, any party may terminate the dispute resolution negotiations.

**14.2. Continued Performance.** The parties agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities and obligations under this Agreement and shall have the right to exercise their rights and remedies.

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

WASHINGTON STATE  
ADMINISTRATIVE OFFICE OF THE  
COURTS

LICENSOR

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_  
Notice Address: \_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
E-Mail: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_  
Notice Address: \_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Email: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

ESCROW AGENT

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Email: \_\_\_\_\_  
Date: \_\_\_\_\_

## **SCHEDULE 1 SOURCE MATERIALS**

Depositor/LICENSOR represents to Beneficiary/LICENSEE that Source Materials delivered to ESCROW AGENT shall consist of the following:

The source code for the Software and all relevant commentary, explanations, and other documentation of the Software, including but not limited to:

- Functional specifications (which describe the function of a Software module from a user point of view in detail) and Software designs for the software, including but not limited to background and detailed instructions for a programmer, the database schema, entity relationship diagrams (where applicable), data objects, and user interface objects. In the case of data interfaces, which have limited user interfaces, it also includes a description of how the overall interface will work on a technical level, the content and format of protocols streams, and shaking considerations. This documentation will also include information describing how to compile and link the source modules to obtain working software, as well as data structures outside of the module which are required to configure or drive the module.
- Source code and documentation for database definition and database procedures (SQL definitions), graphical user interface modules, data interface modules and other Software modules, including but not limited to build procedures.
- Deliverable installation media of current product release, product upgrade media for upgrades issued within three years of each escrow deposit.
- Quality assurance tools, including but not limited to test suites.
- Manuals and training manuals.
- Software installation and support policies and procedures.
- The platform on which the Software operates, including but not limited to hardware, operating system, utilities, and network connectivity.
- The compiler components for the Software.