



## IFOREM AFFILIATE AGREEMENT

PLEASE READ THE FOLLOWING TERMS AND CONDITIONS CAREFULLY. THE TERMS AND CONDITIONS OF THIS AFFILIATE AGREEMENT (the “**AGREEMENT**”) GOVERN **[Entity Name’s]** PARTICIPATION AS AN IFOREM ESCROW AFFILIATE.

This Agreement is made between iForem, Inc. (“**iForem**”) and **[Entity Name]** (after satisfying the conditions of Section 1.1, an “**Escrow Affiliate**”), who collectively may be referred to in this Agreement as the parties (the “**Parties**”). iForem is willing to enter into an escrow affiliate relationship with **[Entity Name]** only upon the condition that **[Entity Name]** accept all the terms contained in this Agreement. By clicking on the “I Accept” button below, **[Entity Name]** has indicated that **[Entity Name]** understands this Agreement and accepts all of its terms. If **[Entity Name]** does not accept all the terms of this Agreement, as well as any additional terms **[Entity Name]** agrees to during **[Entity Name]**’s registration, then iForem is unwilling to enter into an escrow affiliate relationship with **[Entity Name]**.

A. Escrow Affiliate desires to enter into a relationship with iForem for which iForem would make escrow services available for purchase by Escrow Affiliate and Escrow Affiliate’s licensees.

B. iForem desires to make escrow services available to Escrow Affiliate and Escrow Affiliate’s licensees in accordance with the terms and conditions herein.

### 1. REGISTRATION PROCESS

**1.1** **[Entity Name]** will become an Escrow Affiliate under this Agreement after **[Entity Name]** agrees to iForem’s standard escrow agreement (“**Escrow Agreement**”) and pays the applicable fees. Notwithstanding anything to the contrary hereunder, iForem will have no obligation and **[Entity Name]** will have no rights under this Agreement until **[Entity Name]** becomes an Escrow Affiliate.

**1.2** Each separate product that Escrow Affiliate desires to place in escrow with iForem will correspond to a separate Escrow Agreement, the terms of which will govern iForem’s provision of and Escrow Affiliate’s payment for a separate digital storage vault for each such product. For each such product Escrow Affiliate will provide to iForem the URL of no more than one website on which Escrow Affiliate desires to link to the escrow services for such product (each, an “**Affiliate Website**”).

### 2. SERVICE

**2.1** Self-Subscribed Licensees. Escrow Affiliate will download HTML code from the iForem website at [www.iForem.com](http://www.iForem.com) (the “**iForem Website**”) designed to enable Escrow Affiliate to display a functional link on each Affiliate Website that Escrow Affiliate’s Licensees can click for the purpose of initiating the process of becoming an Escrow Beneficiary (as such term is defined in the applicable Escrow Agreement) (the “**Code**” to enable the “**Link**”).

**2.2** Affiliate-Invited Licensees. iForem will also provide functionality through the iForem Website that will allow Escrow Affiliate to invite its licensees to become Escrow Beneficiaries, subject in each case to Escrow Affiliate and such licensee entering into and complying the terms of an Escrow Agreement.

**3. ESCROW AFFILIATE OBLIGATIONS**

**3.1** Escrow Affiliate represents and warrants that all of the registration information Escrow Affiliate supplies to iForem is true, complete, and accurate, and Escrow Affiliate will notify iForem of any changes to its registration information during the term of this Agreement and submit updated information promptly after any such changes.

**3.2** Escrow Affiliate will make no false or misleading representations with regard to iForem or iForem’s services and will make no representations, warranties, or guarantees with respect to the specifications, features, or functionality of iForem’s products or services.

**3.3** Subject to the license rights and restrictions in Sections 5.1(b) and 5.1(c), Escrow Affiliate will install the Code as part of the Affiliate Website in accordance with iForem’s instructions. iForem’s obligations hereunder are contingent upon Escrow Affiliate’s proper installation and use of the Code on the Affiliate Website.

**3.4** None of the Affiliate Websites that Escrow Affiliate submits to iForem contain or link to any web page or site that contains (or iForem suspects in its sole discretion may contain) any:

- (a) nudity, pornography, or other sexual or adult material;
- (b) hate propaganda or material that encourages or promotes illegal activity or violence;
- (c) content that violates or infringes in any way upon the statutory, common law, or proprietary rights of others, including but not limited to copyrights, trademark rights, patents, or any other third party intellectual property, contract, privacy, or publicity rights;
- (d) material that promotes or utilizes software or services designed to deliver unsolicited email;

(e) material that violates any local, state, or national law or regulation; or

(f) misrepresentations or material that is threatening, abusive, harassing, defamatory, obscene, profane, indecent, or otherwise objectionable, offensive, or harmful.

**3.5** Escrow Affiliate will comply with all local, state, and federal laws and regulations governing its actions under this Agreement.

**3.6** Escrow Affiliate represents and warrants that it has full power and authority to enter into this Agreement and to perform its obligations hereunder.

**3.7** Without limiting its other remedies, iForem may immediately terminate this Agreement or the relevant Escrow Agreement, or refuse or cancel Escrow Affiliate’s account, at any time for any violation of the foregoing provisions. To assure compliance with the criteria in Subsection 3.2 above, iForem reserves the right to modify the content of the web pages or sites that correspond to the Affiliate Websites.

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**4. ESCROW AFFILIATE PAYMENT**

**4.1** Escrow Affiliate Commissions. iForem agrees to pay Escrow Affiliate a commission of fifteen percent (15%) of the fees that iForem collects from Escrow Affiliate’s Escrow Beneficiaries as payment for initial enrollment to escrow services governed by an Escrow Agreement to which Escrow Affiliate is the sole depositor (the “**Commission Fees**”). iForem will credit Escrow Affiliate’s account for any Commission Fees due to Escrow Affiliate.

**4.2** Fees. Escrow Affiliate agrees to pay iForem all fees set forth and in accordance with the Escrow Agreement(s) as well any escrow beneficiary fees that Escrow Affiliate agrees to pay on behalf of its licensees. Escrow Affiliate will pay all such fees and applicable taxes in advance.

**5. INTELLECTUAL PROPERTY**

## 5.1 Licenses.

(a) Trademark License. Subject to Escrow Affiliate's compliance with all terms and conditions of this Agreement and iForem's then current usage and quality guidelines, the current version of which is attached hereto as Exhibit A, iForem grants to Escrow Affiliate a nonexclusive, nontransferable (except in accordance with Section 11.6) license during the Term to use the trademark that is rendered by the Code (the "**Trademark**") only for purposes of displaying the Link(s) on the Affiliate Website(s).

(b) Code License. Subject to Escrow Affiliate's compliance with all the terms of this Agreement, iForem grants to Escrow Affiliate a non-exclusive, non-sublicensable, non-transferable (except in accordance with Section 11.6), license during the Term to copy and use the Code on the applicable Affiliate Site solely to display the Link for purpose set forth in Section 2.1. Escrow Affiliate agrees, or to follow the reasonable instructions and restrictions provided by iForem with respect to Escrow Affiliate's installation and use of the Code. Escrow Affiliate agrees that iForem will not be responsible, and that Escrow Affiliate will indemnify iForem in accordance with Section 10, for any malfunctions, errors, data inaccuracies, or improper results attributable to Escrow Affiliate's incorrect, unauthorized, or unsupported installation or use of any Code.

(c) Restrictions. Except as expressly permitted in this Agreement, Escrow Affiliate will not: (a) copy or modify the Code; (b) use the Code; or (c) transfer, sublicense, lease, lend, rent or otherwise distribute the Code to any third party. Escrow Affiliate acknowledges and agrees that the Code and any portion thereof constitute or contain trade secrets of iForem and its licensors. Accordingly, Escrow Affiliate agrees not to disassemble, decompile or otherwise reverse engineer the Code, in whole or in part, or permit or authorize a third party to do so, except to the extent such activities are expressly permitted by law notwithstanding this prohibition.

## 5.2 Ownership.

(a) Intellectual Property. Escrow Affiliate agrees and understands that the Code and all graphic designs, icons, computer programming, and other elements incorporated therein or generated thereby are the exclusive property of iForem. In addition, Escrow Affiliate acknowledges that iForem owns all right, title, and interest in and to iForem's trademarks (including but not limited to the Trademark) trade names, service marks, inventions, copyrights, trade secrets, patents, technology, software, and know-how related to the design, function, or operation of the iForem services contemplated herein. Escrow Affiliate's rights are strictly limited to the rights expressly granted in this Agreement.

(b) Cooperation. Escrow Affiliate will (i) execute any documents necessary to help iForem register, file or renew the registration of the Trademark or applications therefore; (ii) not use the same or confusingly similar marks, or attempt to register the same or similar marks; (iii) report known or suspected infringements of its Trademark to iForem. Escrow Affiliate will not (i) use the Trademarks in any manner that will disparage iForem, its trademarks, products or services, or otherwise have a material adverse effect upon the Trademarks (or the goodwill associated therewith); or (ii) contest the validity or ownership of the Trademarks, either during or after term of this Agreement. Escrow Affiliate acknowledges the validity of the Trademarks. Escrow Affiliate agrees to assign and does hereby assign to iForem any rights based on use of, any goodwill associated with and any other right, title, and interest in, to or associated with the Trademarks and any similar or confusing marks thereto it may have and will cooperate with iForem and execute documentation or take other steps necessary to effect such assignment.

## 6. CONFIDENTIALITY

6.1 Definition. For purposes of this Agreement, "**Confidential Information**" means any technical or business information, including but not limited to the Code, that is disclosed by one Party to the other Party which: (i) might reasonably be presumed to be proprietary or

confidential in nature; (ii) is disclosed in a writing that is marked “confidential” or “proprietary” at the time of such disclosure; or (iii) is disclosed orally and identified as “confidential” or “proprietary” at the time of such disclosure, and is summarized in a writing sent by the disclosing Party to the receiving Party within thirty (30) days after any such oral disclosure.

**6.2 Exceptions.** Confidential Information will not include information that the receiving Party can demonstrate: (i) is now or thereafter becomes generally known or available to the public, through no act or omission on the part of the receiving Party; (ii) was known by the receiving Party prior to receiving such information from the disclosing Party and without restriction as to use or disclosure; (iii) is rightfully acquired by the receiving Party from a third Party who has the right to disclose it under the circumstances and who provides it without restriction as to use or disclosure; or (iv) is independently developed by the receiving Party without access to any Confidential Information of the disclosing Party.

**6.3 Obligations/Restrictions.** Each Party agrees: (i) to take all reasonable action necessary to protect the confidentiality of the other Party's Confidential Information; and (ii) not to use any such Confidential Information for any purpose except in accordance with the terms of this Agreement. Each Party may disclose the Confidential Information of the other Party to its employees and consultants who have a bona fide need to know such Confidential Information, but solely to the extent necessary for each Party to fulfill its obligations and exploit its rights under this Agreement; provided that each such employee or consultant first executes a written agreement (or is otherwise already bound by a written agreement) that contains use and nondisclosure restrictions at least as protective of the other Party's Confidential Information as those set forth in this Agreement. The provisions of this Section 6.3 will not restrict a Party from disclosing the other Party's Confidential Information to the extent required by any law or regulation; provided that the Party required to make such a disclosure uses reasonable efforts to give the other Party reasonable advance notice of

such required disclosure in order to enable the other Party to prevent or limit such disclosure.

## 7. TERM AND TERMINATION

**7.1** This Agreement begins when Escrow Affiliate agrees to be bound by its terms and conditions as provided herein and continues so long as an Escrow Agreement under which Escrow Affiliate is the sole depositor is in effect, unless terminated earlier in accordance with this Section 7 (the “**Term**”).

**7.2** iForem reserves the right to terminate Escrow Affiliate's account and this Agreement: (i) immediately and without notice in the event that Escrow Affiliate breaches any provision of this Agreement or an Escrow Agreement; or (ii) upon providing Escrow Affiliate with at least sixty (60) days written notice of its intent to terminate this Agreement, for any reason. Fees paid pursuant to this agreement are non-refundable except that, if iForem terminates for convenience, iForem will distribute a pro rata refund for services paid for but not provided. Termination of this Agreement will not affect any other right or remedy at law or in equity of either Party.

## 8. DISCLAIMER OF WARRANTY.

iForem warrants any and all services provided hereunder shall be performed in a workmanlike manner. EXCEPT AS SPECIFIED IN THIS SECTION, IFOREM DISCLAIMS TO THE EXTENT ALLOWED BY APPLICABLE LAW ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, AGAINST INFRINGEMENT OR ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. THE EXCLUSIVE REMEDY FOR BREACH OF WARRANTY BY IFOREM SHALL BE RETURN OF THE PORTION OF THE FEES PAID TO IFOREM BY ESCROW AFFILIATE

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FOR SUCH NON-CONFORMING SERVICES. THIS DISCLAIMER AND EXCLUSION SHALL APPLY EVEN IF THE EXPRESS WARRANTY AND LIMITED REMEDY SET FORTH ABOVE FAILS OF ITS ESSENTIAL PURPOSE.

## 9. LIMITATION OF LIABILITY

IN NO EVENT WILL IFOREM BE LIABLE FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO LOSS OF DATA, REVENUE, OR PROFITS), COSTS, OR EXPENSES (INCLUDING BUT NOT LIMITED TO LEGAL FEES AND EXPENSES), WHETHER FORESEEABLE OR UNFORESEEABLE, THAT MAY ARISE OUT OF OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY THEORY INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, BREACH OF WARRANTY, OR NEGLIGENCE. IN NO EVENT WILL THE COLLECTIVE LIABILITY OF IFOREM EXCEED THE FEES PAID UNDER THIS AGREEMENT. THE LIMITATIONS IN THIS SECTION SHALL BE A BASIS FOR ENABLING IFOREM TO OFFER ESCROW SERVICES AT THESE RATES. Without limiting the foregoing, iForem will have no for any loss of Escrow Affiliate's data residing on iForem hardware. Escrow Affiliate is responsible for backing-up Escrow Affiliate's data and information that may reside on the iForem hardware.

## 10. INDEMNIFICATION

Except to the extent due to iForem materially breaching this Agreement or acting with gross negligence or willful misconduct, Escrow Affiliate agrees to indemnify, defend (or settle), and hold harmless iForem, its officers, directors, and employees from any and all liabilities claims, actions, damages, arbitration fees and expenses, costs, and attorney's fees incurred by iForem relating in any way to this Agreement, including but not limited to those resulting from: (a) Escrow

Affiliate's breach of any term, condition, representation, warranty, or covenant in this Agreement; or (b) the information Escrow Affiliate supplies to iForem or makes available to any third party, including Escrow Affiliate's registration data and the content of the web pages corresponding to the Affiliate Websites Escrow Affiliate submits to iForem. This obligation shall survive any termination of Escrow Affiliate's relationship with iForem.

## 11. GENERAL PROVISIONS

**11.1 Controlling Law.** This Agreement will be governed by and construed in accordance with the laws of the State of California excluding that body of laws known as conflicts of law. The Parties expressly agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply. Any legal action or proceeding arising under this Agreement will be brought exclusively to an arbiter in the Northern District of California or the federal or state courts sitting in the Northern District of California, as applicable, and the Parties hereby irrevocably consent to personal jurisdiction and venue therein.

**11.2 Modification.** Any waiver, modification, or amendment of any provision of this Agreement will be effective only if in writing and signed by duly authorized representatives of each Party.

**11.3 Entire Agreement.** This Agreement, any including all exhibits hereto, and the Escrow Agreement(s) between iForem, Escrow Affiliate, and Escrow Beneficiaries constitute the complete and exclusive understanding and agreement between the Parties regarding its subject matter and supersede all other prior or contemporaneous agreements or understandings, written or oral, relating to its subject matter.

**11.4 Notices.** iForem will provide all notices and other communications to the e-mail addresses provided during registration, and, unless otherwise explicitly set forth herein, Escrow Affiliate will provide all notices and other communications by submitting electronic messages through the iForem Website. The foregoing are the only effective channels for

providing notice and all other forms of notice will be ineffective for purposes of this Agreement. iForem will have the right to rely on the last e-mail addresses provided by Escrow Affiliate. Notice provided by iForem will be effective when sent. Notice provided by Escrow Affiliate will be effective when such Party receives an e-mail confirmation that such notice has been received by iForem. iForem has the right to rely upon the e-Mail addresses provided by the Escrow Affiliate, and any correctly addressed notice or notice confirmation from iForem that is refused, unclaimed, or undeliverable because of an act or omission of the Escrow Affiliate will be deemed effective as of the date such notice or notice confirmation was sent.

**11.5 Severability.** If for any reason a court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible and the other provisions of this Agreement will remain in full force and effect.

**11.6 Successors and Assigns.** This Agreement will be binding upon and will inure to the benefit of the successors and assigns of the Parties. However, iForem will have no obligation in performing this Agreement to recognize any successor or assign of Escrow Affiliate unless iForem receives clear, authoritative, and conclusive written evidence of the change of Parties and the registration data for the Escrow Affiliate has been accurately updated.

**11.7 Waiver.** The failure by any Party to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision.

**11.8 Regulations.** Escrow Affiliate will comply fully with all applicable laws, rules, and regulations, including but not limited to all relevant export laws and regulations.

**11.9 Attorney's Fees.** The prevailing Party in any litigation or other proceeding to enforce rights or obligations under this Agreement will be awarded reasonable attorneys' fees, together with

any costs and expenses, to resolve the dispute and to enforce final award or judgment.

**11.10 No Third Party Rights.** Other than the Parties, no person or entity will have or acquire any right by virtue of this Agreement unless otherwise agreed to by all the Parties hereto.

**11.11 Authority.** Each of the Parties represents and warrants that any person submitting or receiving electronic notice under this Agreement is an authorized representative of its business organization and is authorized to bind and act on behalf of such organization for the purposes described herein. Each of the Parties herein represents and warrants that the formation, delivery, and performance of this Agreement has been duly authorized and agreed to by a person who meets statutory or other binding approval to agree on behalf of its business organization as named in this Agreement.

**11.12 Force Majeure.** Neither Party will be liable hereunder (except for payment of money) by reason of any failure or delay in the performance of its obligations on account of events beyond its reasonable control, which include without limitation: strikes; shortages; riots; insurrection; pest; flood; storm; explosions; acts of God; war; terrorism; governmental action; labor conditions; earthquakes; and material shortages (each a "**Force Majeure Event**"). Upon the occurrence of a Force Majeure Event, the Parties will be excused from any further performance of the respective obligations effected by the Force Majeure Event for so long as the effects of the event continue.

**11.13 Independent Contractors.** The Parties to this Agreement are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise, or agency between the parties. Neither party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent.

**12. QUESTIONS**

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If you have any questions about this Agreement or iForem's services, please contact iForem by email at [support@iForem](mailto:support@iForem). Thank you for choosing

iForem. We look forward to doing business with you and hope you find our services valuable.

IF **[Entity Name]** AGREES TO THE FOREGOING TERMS AND CONDITIONS AND DESIRE TO ENTER THE AGREEMENT WITH THE PARTIES TO THIS AGREEMENT, PLEASE CLICK THE "I ACCEPT" BUTTON BELOW. OTHERWISE, PLEASE CLICK THE "I DO NOT ACCEPT" BUTTON.

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**Exhibit A**  
**Usage Guidelines**

1. Trademark Guidelines. Escrow Affiliate will comply with the following usage guidelines:
  - a. Escrow Affiliate will use the Trademarks solely in accordance with the terms and conditions of this Agreement.
  - b. Escrow Affiliate's company name, logo or product name will appear on any Affiliate Website or related materials where a Trademark is used.
  - c. Escrow Affiliate will not combine the Trademarks with any other trademark, trade name, other logo, words, graphics, photos, slogans, numbers, design features, or symbols.
  - d. Escrow Affiliate will not use the Trademarks in any manner that may disparage the Trademarks or impair the validity, scope, title, or goodwill of iForem in the Trademarks.
2. Quality Control. iForem shall have the right to monitor the products, quality of the services and promotional materials used by Escrow Affiliate in association with the monitoring Trademarks. Escrow Affiliate will assist iForem in monitoring the quality of the products, services and promotional materials associated with the Trademarks by making available to iForem upon request sample materials illustrating the use of the Trademarks. Escrow Affiliate will use the Trademarks only in connection with services that meet or exceed generally accepted industry standards of quality and performance.

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