



IFOREM MASTER ESCROW AGREEMENT

PLEASE READ THE FOLLOWING TERMS AND CONDITIONS CAREFULLY. THE TERMS AND CONDITIONS OF THIS MASTER ESCROW AGREEMENT (“**AGREEMENT**”) GOVERN YOUR USE OF IFOREM, INC.’S (“**IFOREM**”) ESCROW SERVICES AS SUCH SERVICES ARE DESCRIBED HEREIN (the “**ESCROW SERVICES**”).

This Agreement is made among iForem, Inc., **[Depositor Entity Name]** (“**Depositor**”), and any Escrow Beneficiary (as defined below), who collectively may be referred to in this Agreement as the parties (the “**Parties**”). iForem is willing to provide the Escrow Services to you only upon the condition that you accept all the terms contained in this Agreement. By clicking on the “I Accept” button below, you have indicated that you understand this Agreement and accept all of its terms. If you do not accept all the terms of this Agreement, then iForem is unwilling to provide the Escrow Services to you.

- A. Escrow Beneficiary has entered into a license agreement (the “**License Agreement**”) under which Depositor has granted a license to Escrow Beneficiary for certain software (the “**Licensed Software**”).
- B. The Licensed Software is important to Escrow Beneficiary in the conduct of its business.
- C. Depositor desires to avoid the disclosure to Escrow Beneficiary of the source code for the Licensed Software, except under the limited circumstances specified in this Agreement.
- D. Depositor and Escrow Beneficiary desire to place the Deposit Materials (as defined below) in escrow with iForem in accordance with the terms of this Agreement.
- E. The Parties desire this Agreement to be supplementary to the License Agreement pursuant to 11 United States Code (the “**Bankruptcy Code**”), Section 705(h).

1. DEPOSITS for each Escrow Beneficiary that has entered into this Agreement.

1.1 Beneficiaries. An “**Escrow Beneficiary**” is an entity or individual that has: (i) entered into a License Agreement with Depositor; (ii) provided all Escrow Beneficiary Registration Data (as defined in Section 4.1); (iii) electronically agreed to this Agreement by clicking “I Accept” as provided above, thereby becoming a party to this Agreement that will receive and incur all rights and obligations of an Escrow Beneficiary set forth herein; and (iv) paid the any fees due in accordance with Section 10. This Agreement will be stored in the Vault (as defined below) and will be electronically accessible at anytime by Depositor and Escrow Beneficiaries. iForem will send an electronic confirmation to Depositor’s E-mail Addresses (as defined in Sections 4.1 and 4.4

1.2 Deposit Obligation. Depositor will deliver to iForem those materials (all of which can be stored digitally) that Depositor is required to deposit with iForem, as identified for escrow deposit in the License Agreement, or, if not identified in the License Agreement, as identified in Exhibit A, including but not limited to, in each case, all information and materials that are necessary to enable a reasonably skilled computer programmer to operate, maintain, and support a fully functional and operative version of the Licensed Software, without the aid of Depositor and without reference to any other materials (the “**Deposit Materials**”). Unless and until Depositor makes the initial deposit with iForem, iForem will have no obligation with respect to this Agreement.

Depositor represents and warrants that the Deposit Materials will be identical for each Escrow Beneficiary.

1.3 Deposit. Depositor will deliver the Deposit Materials to iForem by uploading them to the digital storage vault that iForem makes available to Depositor (the “Vault”). Depositor will provide complete and clear description of Deposit Materials in the electronic form of Exhibit A that iForem makes available during the upload process. The terms in Exhibit A are to be strictly limited to descriptions of the Deposit Materials, and no additional rights or obligations inserted into Exhibit A will be binding on or enforceable against any Party. iForem will have no obligation to Depositor or Escrow Beneficiary with respect to the accuracy of Exhibit A.

1.4 Acceptance of Deposit. iForem will send electronic notice to each Escrow Beneficiary and Depositor after iForem receives and accepts the Deposit Materials. iForem will not, and will have no obligation to, review the Deposit Materials or verify the accuracy, completeness, performance, or functionality of the Deposit Materials. No acceptance by iForem of the delivery of any Deposit Materials under this Section 1.4 will relieve Depositor of its obligation under this Agreement to fully tender to iForem the Deposit Materials.

1.5 Deposit Updates.

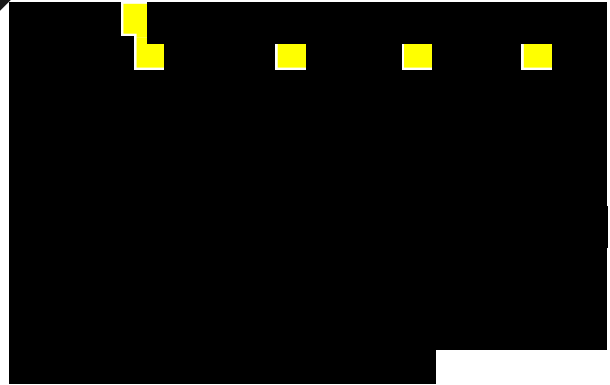
(a) Subject to contrary provisions in the License Agreement, Depositor will update the Deposit Materials no later than fifteen/thirty/forty-five (15/30/45) days after the date Depositor makes generally commercially available any update that Escrow Beneficiary is entitled to receive under the License Agreement, which update may comprise (i) a full software release (each, a “Release Update”) or (ii) an update less than a full software release such as a patch or upgrade (each, a “Patch Update”) (each Patch Update and each Release Update is referred to herein as a “Deposit Update”). Notwithstanding the foregoing, Depositor will be strictly limited to submitting twelve (12) Deposit Updates in each twelve (12) month period during the term of the Agreement.

(b) Patch Updates and Release Updates will be stored in separate directories of the same Vault.

The original Deposit Materials will remain in the Vault, but only the most recent two Release Updates and Patch Updates will be stored, so that a new deposit will replace the Patch Update or Release Update (as applicable) that was added two deposits prior. For example, the third Release Update will replace the initial Release Update and the fourth Release Update will replace the second Release Update.

(c) Depositor will provide a complete and clear description of each Deposit Update by completing the electronic Exhibit A as described in Section 1.3. Deposit Updates will be processed in accordance with Sections 1.3, and 1.4 above.

(d) For each twelve (12) month period during the term of the Agreement, Depositor will have the option of retaining one additional Release Update in the Vault that will not be replaced by a later-deposited Release Update (each, a “Retained Release Update”). If Depositor does save a Retained Release Update(s), the original Deposit Materials and the Retained Release Update(s) will remain in the Vault and all other Deposit Updates would be saved and replaced in accordance with section 1.5(b). Unless expressly specified herein, all references in this Agreement to the Deposit Materials will include all Deposit Updates, and all references in this Agreement to “Current Deposit Materials” will be limited to the initial Deposit Materials, any Retained Release Update(s), and those Deposit Updates then-currently stored in the Vault in accordance with this Section 1.5.



1.6 Removal of Deposit Materials. The Deposit Materials may be removed or exchanged during the term of the Agreement only on written instructions signed by Depositor and Escrow Beneficiary, or as otherwise provided in this Agreement.

2. DEPOSITOR'S REPRESENTATIONS.

Depositor represents as follows:

(a) That it owns or otherwise lawfully possesses all of the Deposit Materials;

(b) it has the right and authority to grant to iForem and Escrow Beneficiary the rights as provided in this Agreement;

(c) the Deposit Materials will be identical for each Escrow Beneficiary;

(d) the Deposit Materials are not and will not be the subject of a lien or encumbrance that in any way alters iForem's rights or obligations under this Agreement; and

(e) the Deposit Materials are readable and useable in their current form or, if any portion of the Deposit Materials is encrypted or not compilable and executable using standard commercially available tools, the decryption tool and decryption keys or compiler and other tools have also been deposited.

3. VERIFICATION SERVICES.

iForem does not offer verification services with respect to the Deposit Materials. Upon the request of Depositor or Escrow Beneficiary, and subject to payment in accordance with Section 10.1, iForem may, in its sole discretion, engage independent contractors to perform verification services or refer Depositor or Escrow Beneficiary, as appropriate, to such third-parties.

4. ACCOUNTS, CONNECTIVITY, AND SECURITY.

4.1 Account Set-Up and Registration. Depositor and Escrow Beneficiary acknowledge and agree to thoroughly and accurately complete account registration through the iForem website (the "**Website**"). Depositor acknowledges and agrees that it accurately provided all of the

information requested by iForem during the registration process including, but not limited to: (i) a unique user name and password; (ii) a contact e-mail address for the Depositor Designated Contact (as defined in Section 4.4) who registered and subscribed for the Escrow Services (a "**Depositor E-mail Address**"); and (iii) a complete and clear description of the Deposit Materials (collectively, the "**Depositor's Registration Data**"). Escrow Beneficiary acknowledges and agrees that it accurately provided all of the information requested by iForem during the registration process including, but not limited to: (i) a unique user name and password; and (ii) a contact e-mail address for the Escrow Beneficiary Designated Contact (as defined in Section 4.4) who registered and subscribed for the Escrow Services (a "**Escrow Beneficiary E-mail Address**") (collectively, the "**Escrow Beneficiary Registration Data**"). Depositor agrees to maintain and promptly update the Depositor Registration Data, and Escrow Beneficiary agrees to maintain and promptly update the Escrow Beneficiary Registration Data to keep it accurate and current.

4.2 Vault Access. Once Depositor has registered in accordance with Section 4.1 and executed this Agreement, Depositor Designated Contact(s) will be able to upload, view, and supplement Current Deposit Materials, but, except for replacement of a Deposit Update in accordance with Section 1.5, will be restricted from modifying or deleting Current Deposit Materials. Once Escrow Beneficiary has registered in accordance with Section 4.1 and executed this Agreement, Escrow Beneficiary Designated Contact(s) will be able to view the filenames of the Current Deposit Materials and, in the event of a Release Condition (as defined in Section 8.1), view and download the contents of the Current Deposit Materials.

4.3 Technology. Escrow Beneficiary and Depositor each acknowledge and agree that it is their respective responsibility to supply their own hardware, software, and connectivity to the internet as necessary to connect to and use Website. Escrow Beneficiary and Depositor each agree to use software, including but not limited to browser software, that supports a data security protocol compatible with the protocol used by

iForem. Escrow Beneficiary and Depositor each acknowledge and agree that iForem is not responsible for any compromise of data transmitted across computer networks or telecommunications facilities, including but not limited to the Internet.

4.4 Access, Passwords, and Security. Escrow Beneficiary and Depositor agree to safeguard and hold their user name and passwords in strict confidence and agree not to disclose their username and passwords to any third party. Depositor represents and warrants that the individual who registers and subscribes for the Escrow Services, as well as any other individual that Depositor authorizes through the Website to use the Escrow Services, understands the nature of and obligations under this Agreement and has the authority to perform the acts and obligations described herein (each, a **“Depositor Designated Contact”**) and that a single password will not be distributed to more than one Depositor Designated Contact. Depositor will provide a single e-mail address for each Depositor Designated Contact (each, a **“Depositor Email Address”**). Escrow Beneficiary represents and warrants that the individual who registers and subscribes for the Escrow Services, as well as any other individual that Escrow Beneficiary authorizes through the Website to use the Escrow Services, understands the nature of and obligations under this Agreement and has the authority to perform the acts and obligations described herein (each, an **“Escrow Beneficiary Designated Contact”**) and that a single password will not be distributed to more than one Escrow Beneficiary Designated Contact. Escrow Beneficiary will provide a single e-mail address for each Escrow Beneficiary Designated Contact (each, an **“Escrow Beneficiary Email Address”**). Escrow Beneficiary and Depositor will make sole responsibility for any activities of their respective Designated Contacts and employees, including but not limited to any actions resulting in a breach of this Agreement or actions under their passwords, whether or not they have authorized such activities or actions. Escrow Beneficiary and Depositor agree to notify iForem immediately if they become aware of any loss or theft or unauthorized use of their user name or passwords.

5. GENERAL PROHIBITIONS

Depositor and Escrow Beneficiary agree not to do any of the following, and iForem reserves the right (but will not have the obligation) to monitor Depositor’s and Escrow Beneficiary’s usage and data (and to delete any such data) to enforce these prohibitions:

5.1 Submit, upload, make available, publish, link to, or transmit any information or communication, that: (i) is false or misleading; (ii) is defamatory; (iii) invades another’s privacy; (iv) is obscene, pornographic, or offensive; (v) promotes bigotry, racism, hatred, or harm against any individual or group; (vi) infringes another’s rights, including but not limited to any intellectual property rights; or (vii) violates, or encourages, any conduct that would violate, any applicable law or regulation or would give rise to civil liability;

5.2 Allow any other individual that is not a Depositor Designated Contact or Escrow Beneficiary Designated Contact to access the Escrow Services using its user name and password;

5.3 Access (except as explicitly authorized herein), tamper with, or use non-public areas of the Escrow Services, any other iForem services, iForem’s computer systems, or the technical delivery systems of iForem’s providers;

5.4 Attempt to probe, scan, or test the vulnerability of any iForem (or its providers’) system or network or breach any iForem security or authentication measures;

5.5 Attempt to access (except as explicitly authorized herein) or search the Escrow Services, other iForem services, or data uploaded through iForem’s services (including but not limited to escrow materials) with any engine, software, tool, agent, device, or mechanism other than the software and search agents provided by iForem or other generally available third party web browsers (such as Microsoft Internet Explorer, Apple Safari, or Firefox);

5.6 Attempt to decipher, decompile, disassemble, or reverse engineer any of the

software used to provide the Escrow Services or any other iForem services;

5.7 Interfere with, or attempt to interfere with, the access of any user, host, or network, including but not limited to sending a virus, worm, or Trojan Horse, overloading, flooding, spamming, or mail-bombing the Escrow Services or any other iForem services;

5.8 Impersonate or misrepresent its affiliation with any person or entity; or

5.9 Launch any automated system, including without limitation, "robots," "spiders," or "offline readers," that accesses the Escrow Services, any other iForem services, or data uploaded through iForem's services in a manner that sends more request messages to the iForem servers in a given period of time than a human can reasonably produce in the same period by using a conventional on-line web browser.

6. CONFIDENTIALITY

iForem agrees to take all reasonable action necessary to protect the confidentiality of the Deposit Materials and not to use the Deposit Materials in any way commercially or otherwise. iForem agrees not to disclose or make the Deposit Materials available in any way that is not in strict compliance with this Agreement. The provisions of this Section 6 will not restrict iForem disclosing the Deposit Material to the extent required by law or regulation, provided that iForem must use reasonable efforts to give the Depositor reasonable advance notice of such required disclosure in order to enable Depositor to prevent or limit such disclosure. iForem will not be required to disobey or contest any order from a court or other judicial tribunal, including, but not limited to, notices delivered pursuant to Section 12.7 below.

7. LICENSE TO REPRODUCE

Depositor hereby grants iForem a non-exclusive, non-transferable (except as provided in Section 13.5), limited license to make copies of,

distribute, and display the Deposit Materials solely as reasonably necessary for iForem to perform its obligations under this Agreement. iForem will reproduce on each copy it makes of the Deposit Materials, and not alter, remove or obscure, any intellectual property rights notices of Depositor and its licensors that appear on the Deposit Materials as delivered by Depositor.

8. RELEASE OF DEPOSIT MATERIAL

8.1 Release Conditions. As used in this Agreement, "**Release Condition**" will mean the occurrence of any of the following conditions:

(a) An order is made for the winding up of the Depositor, or Depositor passes a resolution for winding up or a liquidator of the Depositor is appointed; or

(b) An order is made for the appointment of an administrator of the Depositor or an administrator of the Depositor is appointed; or

(c) Depositor enters into a compromise or arrangement with creditors; or

(d) Depositor has a receiver, administrative receiver or manager appointed over all or any part of its assets or undertaking; or

(e) Depositor is dissolved; or

(f) Depositor ceases to carry on its business or the part of its business which relates to the Deposit Materials; or

(g) A court of law issues a final decision that Depositor is in material breach of its obligations as to maintenance, support, or modification of the Deposit Materials under the License Agreement or any maintenance agreement entered into in connection with the License Agreement and the Deposit Materials; or

(h) Depositor itself chooses to release the Deposit Materials.

8.2 Filing For Release. If Escrow Beneficiary believes in good faith that a Release Condition has occurred, Escrow Beneficiary may submit

electronic notice to iForem and Depositor through the Website of the occurrence of the Release Condition and a request for the release of the Current Deposit Materials. Upon such submission by Escrow Beneficiary, iForem will send electronic confirmation to both Depositor and Escrow Beneficiary in accordance with Section 13.3. If such submission was unauthorized or made in error, Escrow Beneficiary must retract such submission within five (5) days after receiving notice thereof.

8.3 Contrary Instructions. Depositor will have **fifteen/thirty/sixty (15/30/60)** business days from the date Escrow Beneficiary provides electronic notice of a Release Condition to electronically submit contrary instructions to iForem and Escrow Beneficiary through the Website (“**Contrary Instructions**”). Contrary Instructions will mean a representation by Depositor that a Release Condition has not occurred or has been cured. Disputes as to whether a Release Condition has occurred will be resolved pursuant to Section 12.4 and 12.5 of this Agreement. Upon a submission of Contrary Instructions by Depositor, iForem will send electronic confirmation to both Depositor and Escrow Beneficiary. If such submission was unauthorized or made in error, Depositor must retract such submission within five (5) days after receiving notice thereof. Subject to Sections 11.5, 9.3 and 8.4 of this Agreement, iForem will continue to store the Current Deposit Materials without release pending: (a) joint instructions from Depositor and Escrow Beneficiary; (b) dispute resolution pursuant to Section 12.4 and 12.5; or (c) an order from a court of competent jurisdiction. Additionally, iForem will notify both Depositor and Escrow Beneficiary that there is a dispute.

8.4 Release of Deposit. If iForem does not receive timely Contrary Instructions from the Depositor, iForem is authorized to release the Current Deposit Materials to the Escrow Beneficiary. In addition, iForem will comply with all dispute resolution orders issued by an arbitrator or court of competent jurisdiction pursuant to Sections 12.4 and 12.5, as applicable, requiring release of the Current Deposit Materials. iForem will release the Current Deposit Materials by making the Deposit Materials available for

Escrow Beneficiary’s download from the Website and will have no obligation to otherwise deliver the Current Deposit Materials. However, iForem is entitled to receive any fees due iForem before making the Current Deposit Materials available to Escrow Beneficiary. This Agreement will automatically terminate with respect to a beneficiary who receives access to the Current Deposit Materials as a result of a release of the Current Deposit Materials in accordance with the terms of this Section 8.4. iForem will provide notice to Escrow Beneficiary that the Current Deposit Materials are available for Escrow Beneficiary’s electronic download and will make the Current Deposit Materials available for Escrow Beneficiary’s download for at least sixty (60) days following such notice.

8.5 Right to Use Following Release. Depositor hereby grants to Escrow Beneficiary a nonexclusive, nontransferable license, to use, copy, and modify the Current Deposit Materials, solely for the purpose of enabling Escrow Beneficiary to maintain and support the Licensed Software, solely to the extent that Escrow Beneficiary would have otherwise received such maintenance and support from Depositor under the License Agreement. Escrow Beneficiary will have no right to use the Current Deposit Materials except as specified in the foregoing license grant. Escrow Beneficiary will maintain the released Current Deposit Materials in strict confidence. Nothing in this paragraph will be construed to affect Escrow Beneficiary’s rights to the Licensed Software under the License Agreement. The license rights granted in this Section 8.5 will survive termination of this Agreement, but only in the event this Agreement terminates pursuant to Section 8.4.

9. TERM AND TERMINATION

9.1 Term of Agreement. This Agreement will commence when the Escrow Beneficiary has accepted its terms and will continue until **[Date]** (the “**Initial Term**”), unless terminated earlier as provided in this Agreement. iForem will provide electronic notice of imminent expiration to Depositor and Escrow Beneficiary at least fifteen (15) days prior to the end of the Initial Term Date or a Renewal Term, as applicable. Depositor will

have the option to pay the applicable fees and renew the Agreement for an additional one (1) year term (each, a “**Renewal Term**”). Escrow Beneficiary will receive electronic notice of any such renewal and, upon receipt of such notice, will have the option to pay the applicable fees to remain an Escrow Beneficiary for the applicable Renewal Term.

9.2 Termination. The Agreement will terminate if (i) The Affiliate Agreement between Depositor and iForem terminates; (ii) Depositor and Escrow Beneficiary each provide electronic notice to iForem that the Agreement is terminated; or (iii) iForem provides Depositor and Escrow Beneficiary with at least sixty (60) days written notice of its intent to terminate this Agreement for any reason other than for nonpayment. In the event of the nonpayment of fees owed to iForem, iForem will provide notice of delinquency to all Parties to this Agreement. If the delinquent Party does not make the past due payment in full to iForem within one (1) month of the date of such notice, then iForem will have the right to terminate this Agreement at any time thereafter by providing notice of termination to all Parties. iForem will have no obligation to take any action under this Agreement so long as any payment due to iForem remains unpaid. Fees paid or payable under 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 any Party.

9.3 Disposition of Current Deposit Materials Upon Termination. Subject to the foregoing termination provisions, and upon termination or expiration of this Agreement, iForem will destroy or provide Depositor electronic access to the Current Deposit Materials in accordance with Depositor’s instructions. If iForem receives no such instructions within five (5) working days of termination or expiration, iForem may, at its sole discretion, destroy the Current Deposit Materials or provide Depositor with electronic access to the Current Deposit Materials. iForem will have no obligation to destroy or provide access to any Current Deposit Materials that are subject to another escrow agreement with iForem or have

been released to the Escrow Beneficiary in accordance with Section 8.4.

9.4 Termination of Escrow Beneficiaries. Notwithstanding anything to the contrary herein, Escrow Beneficiary’s rights under this Agreement will immediately terminate on the date such Escrow Beneficiary’s rights to receive support and maintenance under the License Agreement terminate or expire. The following process will be used to determine whether Escrow Beneficiary’s rights under this Agreement have terminated in accordance with this Section 9.4:

(a) Depositor will submit electronic notice through the Website if it believes in good faith that Escrow Beneficiary’s rights to receive support and maintenance under the License Agreement have expired or been terminated. Upon such submission by Depositor, iForem will send electronic confirmation to both Depositor and Escrow Beneficiary in accordance with Section 12.3. If such submission was unauthorized or made in error, Depositor must retract such submission within five (5) days after receiving notice thereof.

(b) Escrow Beneficiary will have **fifteen/thirty/sixty (15/30/60)** business days from the date Escrow Beneficiary receives electronic notice in accordance with Section 9.4(a) to electronically submit contrary information to iForem and Depositor through the Website (“**Contrary Termination Instructions**”). Contrary Termination Instructions will mean a representation by Escrow Beneficiary that it has continuing support and maintenance rights under the License Agreement. Disputes as to whether Escrow Beneficiary has continuing rights to support and maintenance under the License Agreement will be resolved pursuant to Section 12.4 and 12.5 of this Agreement. Upon a submission of Contrary Termination Instructions by Escrow Beneficiary, iForem will send electronic confirmation to both Depositor and Escrow Beneficiary. If such submission was unauthorized or made in error, Escrow Beneficiary must retract such submission within five (5) days after receiving notice thereof.

(c) If iForem does not receive timely Contrary Termination Instructions from the

Escrow Beneficiary, this Agreement will terminate with respect to such Escrow Beneficiary and iForem will provide notice of such termination to Escrow Beneficiary and Depositor. In addition, iForem will comply with all relevant dispute resolution orders issued by an arbitrator or court of competent jurisdiction pursuant to Sections 12.4 and 12.5.

9.5 Survival of Terms Following Termination. The rights and obligations of the Parties contained in the following provisions of this Agreement will survive expiration or termination of the Agreement: 2, 5, 6, 9, 10, 11, 12, 13, and any provisions in this Agreement that specifically state they survive the termination of this Agreement.

10. IFOREM'S FEES

10.1 Fee Schedule. iForem is entitled to be paid its standard fees and expenses applicable to the services provided, which will be presented through the Website when the applicable service is ordered. iForem may change its standard fees at any time by updating the applicable pricing information or other terms posted on the Website. New Escrow Agreements entered into and Escrow Agreements renewed after such prices are posted to the Website will be subject to the new fees. Depositor and Escrow Beneficiary, as applicable, will pay for the Escrow Services in the amount presented to such party during the registration or renewal process, as applicable. Additional services will be paid for by the Party ordering such service from the Website. The Party requesting a service not specified on iForem's standard fee schedule will be responsible for payment for such service, the pricing for which will be negotiated between iForem and such Party. iForem is not required to perform any service, including but not limited to release of any Current Deposit Materials under Article 8, unless iForem has been paid in full for all services provided hereunder.

10.2 Payment Terms. The Party responsible for payment, as set forth in Section 10.1, will pay all fees and applicable taxes due under this Agreement in advance.

11. 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 PAYING PARTY 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.

12. LIABILITY AND DISPUTES

12.1 Right to Rely on Instructions. iForem may act in reliance upon any instruction, instrument, electronic message, or signature reasonably believed by iForem to be genuine; provided that iForem is not obligated to act on any notice that is not provided in compliance with Section 13.3. iForem may assume that any individual who has used Depositor's or Escrow Beneficiary's username and password to send electronic instructions through Depositor's or Escrow Beneficiary's account has the authority to do so. iForem will not be required to inquire into the truth or evaluate the merit of any statement or representation contained in any notice. iForem will not be responsible for failure to act as a result of causes beyond the reasonable control of iForem.

12.2 Indemnification. Except to the extent due to iForem materially breaching this Agreement or acting with gross negligence or willful misconduct, Depositor and Escrow Beneficiary each agree 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.

12.3 Limitation of Liability. EXCEPT FOR CLAIMS THAT IFOREM ACTED WITH GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OR FOR PERSONAL INJURY OR TANGIBLE PROPERTY DAMAGE CLAIMS: (I) 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; AND (II) IN NO EVENT WILL THE COLLECTIVE LIABILITY OF IFOREM EXCEED FIVE TIMES THE FEES PAID UNDER THIS AGREEMENT. THE LIMITATIONS IN THE FOREGOING SENTENCE FORMED A BASIS FOR ENABLING IFOREM TO OFFER ESCROW SERVICES AT THESE RATES.

12.4 Dispute Resolution by Arbitration. Except as expressly specified in Section 12.5 below, any dispute relating to or arising from this Agreement will be submitted to, and settled by binding arbitration by, a single arbitrator (chosen by the San Francisco Regional Office of the American Arbitration Association) in accordance with the Commercial Rules of the American Arbitration Association then in effect. The arbitrator will apply California law and will issue a brief decision in writing setting forth his findings and reasoning. Unless otherwise agreed by Depositor and Escrow Beneficiary, arbitration will take place in San Francisco, California, U.S.A. Any court having jurisdiction over the matter may enter judgment on the award of the arbitrator. Service of a petition to confirm the arbitration award may be made by First Class mail

or by commercial express mail, to the attorney for the Party or, if unrepresented, to the Party at the last known business address. If, however, Depositor or Escrow Beneficiary refuses to submit to arbitration, the matter will not be submitted to arbitration and iForem may submit the matter to any court of competent jurisdiction for an interpleader or similar action. Any costs of arbitration or court incurred by iForem, including reasonable attorney's fees and costs, will be divided equally and paid by Depositor and Escrow Beneficiary.

12.5 Dispute Resolution by Bankruptcy Court. Notwithstanding the terms of Section 12.4 hereof, any dispute regarding Escrow Beneficiary's entitlement to the Current Deposit Materials during the pendency of a bankruptcy case filed by or against Depositor, will be resolved before the U.S. Bankruptcy Court with jurisdiction over such case, rather than by arbitration under Section 12.4 hereof.

12.6 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 located in the Northern District of California, as applicable, and the Parties hereby irrevocably consent to personal jurisdiction and venue therein.

12.7 Notice of Requested Order. If any Party intends to obtain an order from the arbitrator or any court of competent jurisdiction that may direct iForem to take, or refrain from taking any action, that Party will:

- (a) Give iForem at least five (5) business days' prior notice of the hearing; and
- (b) Include in any such order that, as a precondition to iForem's obligation, iForem be paid in full for any past due fees and be paid for the reasonable value of the services to be rendered pursuant to such order.

13. GENERAL PROVISIONS

13.1 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.

13.2 Entire Agreement. This Agreement, any including all exhibits hereto and the Affiliate Agreement between Depositor and iForem constitute the complete and exclusive understanding and agreement between the Parties regarding its subject matter and supersede all prior or contemporaneous agreements or understandings, written or oral, relating to its subject matter.

13.3 Notices. iForem will provide notices and other communications to Depositor through the Depositor E-mail Addresses and to Escrow Beneficiary through the Escrow Beneficiary E-mail Addresses, all of which are provided in accordance with Sections 4.1 and 4.4 and, unless otherwise explicitly set forth herein Depositor and Escrow Beneficiary will provide all notices and other communications by submitting electronic messages through the 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 in accordance with Sections 4.1 and 4.4. Notice provided by iForem will be effective when sent. Notice provided by either Escrow Beneficiary or Depositor 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 in accordance with Sections 4.1 and 4.4, and any correctly addressed notice or notice confirmation from iForem that is refused, unclaimed, or undeliverable because of an act or omission of the Party to be notified as provided herein will be deemed effective as of the date such notice or notice confirmation was sent.

13.4 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.

13.5 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 Depositor or Escrow Beneficiary unless iForem receives clear, authoritative and conclusive written evidence of the change of Parties and the Registration Data for all Parties has been accurately updated.

13.6 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.

13.7 Regulations. Escrow Beneficiary and Depositor will comply fully with all applicable laws, rules, and regulations, including but not limited to all relevant export laws and regulations. Escrow Beneficiary and Depositor warrant that performance of this Agreement will not result in the export or re-export of any Deposit Material directly or indirectly in violation of export laws

13.8 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.

13.9 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.

13.10 Authority. Each of the Parties represents and warrants that each of their respective Designated Contact(s), and 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.

13.11 Force Majeure. Neither Party will be liable hereunder 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; fires; 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.

13.12 Agreement. Depositor and Escrow Beneficiary acknowledge and agree that they will have agreed to and become a Party to this Agreement at different times. Each of Depositor and Escrow Beneficiary is deemed to have entered into and become bound by this Agreement as of the moment it accepts its terms by clicking “I Accept” as provided below, notwithstanding that all Parties may have yet to accept its terms.

IF YOU AGREE TO THE FOREGOING TERMS AND CONDITIONS AND DESIRE TO ENTER THE AGREEMENT WITH THE PARTIES TO THIS AGREEMENT, PLEASE CLICK THE “ACCEPT” BUTTON BELOW. OTHERWISE, PLEASE CLICK THE “I DO NOT ACCEPT” BUTTON.

ACCEPT

I DO NOT ACCEPT

Sample Document
Personal or Business Use
Prohibited
Copyright 2008 - iForem, Inc.

[All information in Exhibit A is automatically inserted based on information to be provided by Depositor during registration (for Initial Deposit) or the update process (for Deposit Update).]

EXHIBIT A

Deposit ID: _____

1. Description of Deposit Material:

Depositor represents to Escrow Beneficiary that Deposit Materials delivered to iForem will consist of the following: [XXX]

Instruction Manual? Yes / No Title:

Software spec? Yes / No Title:

If Deposit is a "Deposit Update", is it a Patch Update or a Release Update? _____

2. Product Name: [XXX] Version [XXX] _____

3. Deposit Material Information:

Is the media or are any of the files encrypted? Yes / No If yes, the corresponding passwords and the decryption tools are [XXX]

Encryption tool name _____ Version _____

Hardware required _____

Software required _____

Other required information _____

4. Depositor Information:

Company Name: _____

Contact Name/Title: _____

Address: _____

State / Country of Incorporation: _____

BY CLICKING THE "I ACCEPT" BUTTON BELOW, DEPOSITOR CERTIFIES THAT THE ABOVE DESCRIBED DEPOSIT MATERIALS HAVE BEEN TRANSMITTED TO IFOREM AND ARE SUBJECT TO THE MASTER ESCROW AGREEMENT DEPOSITOR HAS ENTERED INTO WITH IFOREM.

I ACCEPT