SOURCE CODE ESCROW

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§ 21:1. Generally

Software is expressed in two variations of code: source code (the original written program) and object code (the compiled or end-user version). Most software license agreements license the right to use the object code version of the software. For off-the-shelf software, this is the only version an end-user is likely to ever have rights to access. For software licenses on a business-to-business ("B to B") arrangement, the end-user may request access to the source code as a recourse should the vendor not be able to continue to provide updates or support (e.g., bankruptcy, out-of-business, loss of key personnel). The vendor will rarely release the source code directly to the end-user. Generally, the source code is held in an escrow account by a neutral third party. Source code escrow agreements, if used, are typically attached to software license agreements (whether for custom development or not), and the provision triggering the release of source code is typically part of the software license agreement.[1]

Ideally, the end-user customer would prefer to have outright ownership of a copy of the source code and design documentation, on site and under its own control. Software vendors never want to release the source code. Source code and design documentation are the key intellectual property for software companies, the pattern or template from which unlimited quantities of saleable product can be manufactured. The last thing a vendor wants is a customer, especially one capable of becoming a competitor, getting access to the source code.

An escrow agreement represents an uneasy compromise. The customer can get the source code if a "release event" specified in the license agreement comes to pass.

Under the 1988 Bankruptcy Code amendments, the customer can get the source code even if the vendor files a petition in bankruptcy and rejects the escrow agreement.[2]

[FN1] *See also* §§ 18:1 et seq. and §§ 19:1 et seq.

[FN2] *See* 11 U.S.C.A. § 365(n); *see also* §§ 18:1 et seq.

§ 21:2. Escrow provisions for license agreements

The escrow provision for license agreements is typically a heavily negotiated provision. The customer wants broad release rights, the vendor wants release only in the instance of bankruptcy, and the rights upon release are also negotiated. One example of this provision is listed below:

1. <u>Release Event</u>. If Licensor, or a third party designee acceptable to Customer, no longer provides Support Services for the Software in accordance with Licensor's obligations under this Agreement ("Release Event"), then Licensor or its authorized agent will provide to Customer within fourteen (14) days of request the source code for said Software and all necessary information to allow Customer to recompile, modify, maintain, and enhance the Software without the aid of Licensor. In order to ensure compliance with the foregoing, Licensor will promptly and continuously maintain the Software source code and all revisions, corrections, enhancements, and other changes that Licensor has developed for the Software. The governing License includes the right to use the source code version of the Software received under this Section as necessary to enhance, maintain, create derivative works, and otherwise modify the Software.

2. <u>Source Code Escrow</u>. At no additional cost to Customer, Licensor agrees to name Customer as a beneficiary in its Software escrow agreement within 30 days following Acceptance of the Software pursuant to this Agreement. The Software escrow agreement is attached hereto as Exhibit D and incorporated herein by this reference. The escrow agreement shall authorize the escrow agent to release the source code to Customer in the event of a Release Event and allow Customer to verify the accuracy and completeness of the deposit. In the event of any conflict between the escrow agreement and this Agreement, the terms of this Agreement shall govern. Furthermore, Licensor shall inform the escrow agent of the terms of this Article 11. The Parties agree that the escrow agreement identified in this Section should be considered supplementary to this Agreement, in accordance with the terms of 11 U.S.C.A § 365(n).

3. <u>Definition of License Rights</u>. All rights and licenses granted under or pursuant to this Agreement by Licensor to Customer are, and shall otherwise be deemed to be, for purposes of § 365(n) of the Bankruptcy Code (11 U.S.C.A. §§ 101 et seq.), licenses of rights to "intellectual property" as defined therein. The Parties agree that Customer, as a licensee of such rights, shall retain and may fully exercise all of its rights and elections under the Bankruptcy Code.

§ 21:3. Escrow provisions for license agreements—Two-party vs. three-party escrow agreements

<u>Source code escrow agreements are either two-party arrangements or three-party arrangements</u>. Two-party arrangements are the most common. In a two-party arrangement, the licensor has established a single general escrow account for the benefit of its licensees. Licensees are added as beneficiaries to the account by executing a single form. There may be a minimal charge to add additional licensees as beneficiaries. Three-party arrangements are typically created for a specific transaction, and usually executed by the licensee, licensor and escrow agent. While in most instances it is the licensor who establishes the arrangement for escrowing of the source code with an escrow agent, sophisticated licensees are also establishing master two-party escrow agreements with an escrow agent solely for the licensee's benefit. In such cases, the licensee will request that the licensor execute a deposit form requiring the licensor to make deposits of its source code to the licensee's escrow account. The latter arrangement provides the

licensee with additional security that the escrow account will not canceled without its consent and can give the licensee more control over what the conditions are for release of the source code.

Where the escrow agreement does not meet the licensee's needs, the licensee should request an addendum between the licensee, licensor and escrow agent that modifies the escrow agreement to meet the licensee's needs. The parties may also wish to describe the escrow arrangement, release conditions, use rights within the license agreement.

§ 21:4. Escrow provisions for license agreements—What materials need to be deposited?

The licensee should ensure that what the licensor needs to deposit into the escrow account is adequately described so that if released, the licensee would have what it needs to support, maintain and modify the software. For example, such materials may be described as follows: the computer program expressed in a source code language consisting of a full source language statement of the program the Software is comprised of and all related compiler command files, build scripts, complete maintenance documentation, application programming interfaces, graphical user interfaces, schematic diagrams and annotations which comprise the pre-coding detail design specification, and all other material necessary to allow a reasonably skilled programmer to maintain and enhance the software without the assistance of the licensor.

§ 21:5. Escrow provisions for license agreements—Verification

The licensee should ensure that it has the right to require the escrow agent to verify that the completeness, currency and accuracy of the deposited materials. Typically, any costs associated with such verification are paid by the licensee, but the licensor should bear any costs of testing and updating the deposit materials if the verification reveals inadequacies in the deposited materials. The extent of the tests or procedures to be done to the deposited materials as part of such verification can vary and should be described in the escrow agreement, or agreed upon independently with the escrow agent.

§ 21:6. Escrow provisions for license agreements—Release conditions

Escrow arrangements are only as valuable as the release conditions, so licensees should make sure that the escrow agreement's release conditions include those events that would likely place the licensee in a situation where they will need to self-support the software. The escrow agent will not release the source code unless the release conditions are met. The release conditions are often a point of negotiation, as the licensor will want these conditions to be fairly restrictive to avoid release unnecessarily. The most common types of release conditions an licensee will seek are as follows: a decision by the licensor or a purchaser of the licensor to discontinue support of a version of the software that the licensee is using; a material failure of the licensor to meet its support obligations; or licensor is the debtor in a bankruptcy, is insolvent, or makes an assignment for the benefit of creditors. The occurrence of any one of the foregoing should trigger the right for the licensee to obtain the source code.

§ 21:7. Escrow provisions for license agreements—How does the release occur?

Most escrow agreements include a process for the release of the source code to the licensee. Once the licensee

makes a demand for its release, the escrow agent notifies the licensor and the licensor typically will have a period of time to contest the release (asserting that the release condition has not been met). If this happens, most escrow agreements provide for arbitration or some other form of dispute resolution. Licensees will want the release process to be as simple and quick as possible, as the continuity of their business or other aspects of their business may be at risk if software remains unsupported for any period of time. Therefore, the licensee should try to shorten or eliminate the period for the licensor to contest the release of the source code, and avoid a lengthy dispute with the licensor for its release. Consider allowing for release of the source code if a release event occurs, upon the licensee's request, especially where mission critical software is involved.

§ 21:8. Escrow provisions for license agreements—Use rights of the source code materials

The licensee needs to ensure that upon release of the source code it has the rights it needs to use the source code materials. Therefore, the escrow agreement should expand the licensee's license, permitting the licensee to support, maintain, modify, enhance and copy the source code. The licensee should also consider obtaining the right to utilize third-parties to assist the licensee in its use of the source code, provided such third-parties agree to the confidentiality restrictions in the underlying license agreement.

§ 21:9. Escrow provisions for license agreements—Additional considerations

There are several additional considerations for the escrow provision:

1.   The definition of the "deposit," as noted above, should include the source code for the relevant software, the design and/or user documentation, and technical instructions on the compiling and linking of the source code into the final executable object code.

2.   The timing for deposits of modifications or new source code provided under the license agreement (e.g., deposited within 10 days of delivery of same to licensee).

3.   The right to have the source code and documentation verified by a third party.[1] This audit right is sometimes already incorporated into the escrow agent agreement and may be acceptable if the escrow agent is a trusted third party.[2]

   a. The audit right is often further detailed as to when such audits may be or must be performed (e.g., within five business days after delivery of any deposit).

   b. There is often a mandate that the escrow agent sign a mutually acceptable confidentiality provision.

   c. The location of the audit may be critical. If the audit provides that it is conducted on the licensor's site, then upon a true triggering event where it will be performed on licensee's site, it may not work as tested.

   d. There may be verification steps for auditing the source code deposit (e.g., representative to accompany delivery of, sign off by licensee's representative, etc).

4.   The responsibility for paying the escrow fees may change. For example, the licensee may agree to pay the fees, provided that the licensor shall reimburse all such fees if the triggering event is based on a material breach

of the license by licensor.

5. The release may be temporary or permanent depending on the type of triggering event.

   a. A permanent release is required if the licensor dissolves or becomes insolvent.

   b. A permanent release may be required if the licensor files for bankruptcy (but this often is tempered by a period of time for dismissal).

   c. A permanent release if the licensor is acquired by a competitor of licensee (typically specified by a list of named competitors).

   d. A temporary release may be appropriate if the release is due to a failure to correct a bug and/or failure to correct another breach timely.

6. The notice of the release event is often specified (timing, to whom sent, and type of release).

7. The licensor may have a right to disclosure of all names of employees and their histories for any employee working with the source code.

8. Penalty amounts (i.e., liquidated damages) for failure to release and/or fraudulent inducement to release.[3]

   [FN1] See § 21:5.

   [FN2] See § 21:11.

   [FN3] Mid-Michigan Computer Systems, Inc. v. Marc Glassman, Inc., 416 F.3d 505, 511, 75 U.S.P.Q.2d 1584, 2005 FED App. 0304P (6th Cir. 2005) (upholding as valid a $50,000 per incident liquidated damages clause in the escrow provision which resulted in a $2 million compensatory award).

§ 21:10. Direct escrow arrangements

Another type of escrow arrangement is one that eliminates the escrow agent, and is directly between the licensor and licensee. In these arrangements, the end-use allows the licensor to serve as its own escrow agent and the parties set forth the terms for release of the source code to the licensee within the license agreement. For obvious reasons this arrangement is problematic; the licensee may find it difficult to enforce such a provision, especially if the licensor's company is in bankruptcy or dissolution.

§ 21:11. Escrow agent agreement

A software vendor typically negotiates a two-party escrow agreement which permits the vendor to deposit its software with the escrow agent. The escrow agreement is structured kind of like an insurance policy:

- there's a beneficiary (who receives the software);
- a triggering event (when the software may be released);
- an obligation for the depositor to pay for the service and fulfill its obligations; and

- an obligation on the part of the escrow agent to provide the agreed services (safe storage and release to beneficiary) upon the triggering event.

Typically, an escrow agent agrees to inspect the deposits and to store such deposits in a safe, secure environment. The parties mutually agree what triggers a release of the deposit for a beneficiary. The beneficiaries are named (sometimes requiring an express agreement signed by the depositor and the beneficiary). The depositor has the right to make replacement or additional deposits as modifications are made to the software. The escrow agent has the responsibility to inspect such deposits for completeness and then store them in a secure environment.

The triggering events are negotiated and change for every type of agreement. As between a licensee and the licensor, the events may include:

- any breach (typically narrowed to material breach) of the license agreement;
- licensor fails to correct a material defect in the software;
- bankruptcy;
- dissolution of the company; or
- upon the licensor's election to stop providing maintenance/support services.

§ 21:12. Escrow agent agreement—Sample escrow agent provisions

A sample of the key provisions in an escrow agent agreement includes:

1. Depositor Responsibilities.

(a) Depositor shall provide all information required for Escrow Agent to fulfill a Statement of Work ("SOW").

(b) Depositor may appoint one or more persons ("Authorized Person(s)") to manage the escrow account.

(c) Depositor may enroll one or more beneficiaries (each individually a "Beneficiary") under this Agreement.

To enroll a Beneficiary, Depositor will execute and submit to Escrow Agent a Beneficiary Acknowledgment. Depositor shall use commercially reasonable efforts to assure that all Beneficiary information contained in each Beneficiary Acknowledgement is complete and accurate.

(d) Depositor shall make an initial deposit that is complete and functional source code version of the software, along with any other materials, identified in the SOW (the "Deposit") to Escrow Agent within sixty (60) days of the Effective Date. Depositor may also update the Deposit from time to time during the Term of this Agreement provided a minimum of one (1) complete and functional copy of the Deposit is deposited with the Escrow Agent at all times. At the time of each deposit or update, Depositor will provide an accurate and complete description of the Deposit.

(e) Depositor represents and warrants that:

(i) Depositor owns, or has the rights to use and possess, the Deposit provided to Escrow Agent under any SOW free of any liens or encumbrances as of the date of their deposit. Any Deposit liens or encumbrances made after their deposit will not prohibit, limit, or alter the rights and obligations of Escrow Agent under this Agreement;

(ii) The Deposit is readable and useable in its then current form. Depositor acknowledges and agrees that if any portion of the Deposit is encrypted, the necessary decryption tools and keys to read such material are deposited contemporaneously.

2. Escrow Agent Responsibilities.

(a) Escrow Agent agrees to use commercially reasonable efforts to provide the Services requested by Authorized Person(s) representing the Depositor in a SOW and permitted requests from a Beneficiary.

(b) Escrow Agent will conduct a deposit inspection upon receipt of any Deposit. If the Escrow Agent determines that the Deposit does not match the description provided by Depositor, Escrow Agent will provide Depositor with notice of such discrepancies. Escrow Agent will work directly with the Depositor to resolve any such discrepancies prior to accepting the Deposit. Escrow Agent will provide Depositor with notice from time to time during the first sixty (60) days from the Effective date as a reminder that submission of initial Deposit is required.

(c) Escrow Agent will hold and protect all Deposit(s) in physical and/or electronic secure environment that is either owned or under the direct control of Escrow Agent.

(d) Escrow Agent will ensure that all employees and/or permitted agents who perform Services are aware of and subject to a confidentiality obligation equivalent to Escrow Agent's obligation under this Agreement.

3. Release Conditions.

(a) Upon notice by Beneficiary of a release condition, Escrow Agent will provide notice to Depositor. From the date of notice Depositor will have X days to provide notice of either (i) opposition to the release; or (ii) cure of the release triggering event.

(b) If Escrow Agent does not receive such notice from Depositor within the X days, Escrow Agent will release the Deposit to Beneficiary under the terms of the Release Obligation provision.

(c) Escrow Agent will accept notice from Beneficiary as valid for the following release conditions:

(i)   Appointment of a trustee under a bankruptcy proceeding;

(ii) Entry for an order of relief under Chapter 11 of the Bankruptcy Code;

(iii) A general assignment for the benefit of creditors;

(iv) A filing of dissolution of Depositor's corporate entity;

(v) Action by Depositor under any state or federal insolvency or similar law for the purpose of its bankruptcy, reorganization, or liquidation; and

(vi) Other action as expressly specified in the SOW.

Another example of an Escrow Agent Agreement may be found in the attached Appendix A—Iron Mountain's Three-Party Agreement reprinted with permission from Iron Mountain, Inc.

§ 21:13. Litigation considerations for escrow agreements

Most customers presume that the agreement for source code escrow is the only step necessary for protection of its continued use of the software. Customers, however, fail to consider that the escrow agreement itself is typically between the vendor and the third-party escrow agent. Those agreements[1] often include a right for the vendor to dispute that a release event has occurred. This means that even though the customer believes that a triggering event has happened, the vendor still has the right to delay or even prevent the release of the source code. In this situation, the customer's only recourse is litigation (or arbitration if the contract so specifies).

A breach of an escrow agreement will typically be litigated, or arbitrated, under basic contract law considerations. In addition to claims under contract law, however, both parties also need to consider typical defenses to such claims. Limitation on liability provisions, or liquidated damages provisions for source code escrow, may be defeated by a contract law defense such as unconscionability or "failure of essential purpose." Neither party should rely on such a defense, of course, but if liquidated damages or too high, or the possible financial recourse is too low for the actual loss, then a court may consider granting relief under one of the defenses.[2]

Note, however, that courts review negotiated contracts differently than they do unilateral contracts from a business to a consumer. For example, the Sixth Circuit concluded:

Electro-Matic also contends that the limited remedy of § 8.2 fails of its essential purpose and that therefore the exclusion of consequential damages should be disregarded as unconscionable. This argument is also without merit. In determining whether a damages limitation or exclusion clause is unconscionable, this court has noted that "[u]nconscionability deals with grossly unequal bargaining power at the time of … contract[] formation. As numerous decisions have pointed out, unconscionability rarely exists unless the buyer is a consumer." Massachusetts is in accord. The Massachusetts Supreme Judicial Court has held that excluding consequential damages 'where the two parties are sophisticated business entities, and where consequential damages in the event of a problem could be extensive, is a reasonable business practice.'[3]

At least one court has, however, denied the application of a limitation of liability clause due to failure of essential purpose, even while acknowledging that an unconscionability defense would fail because the contract was between two commercial entities.[4]

[FN1] See § 21:3.

[FN2] See Mid-Michigan, 416 F.3d at 511.

[FN3] Electro-Matic Products, Inc. v. Prime Computers, Inc., 884 F.2d 579, 1989 WL 99044, *5 (6th Cir. 1989) (citations omitted).

[FN4] Wayne Memorial Hosp., Inc., Wayne Health Corp. v. Electronic Data Systems Corp, 1990 WL 606686, *7–8 (E.D. N.C. 1990) (holding unconscionability failed so punitive damages, etc. still precluded, but allowing for direct damages greater than the cap).

§ 21:14. Encryption as an alternative to escrow

Escrow arrangements can be difficult to negotiate and may be costly to set up and maintain. The escrowed ma-

terials must be kept current—which may be an administrative burden where a third-party escrow agent is involved.

The biggest issue for escrow arrangements is the inherent conflict between the customer's and the vendor's positions. The customer demands access to the source code in order to alleviate business risks from loss of support and/or updates should the vendor be unwilling or unable to provide them (e.g., due to insolvency, etc). The vendor, naturally, view the source code as the critical intellectual property for its company and are strongly opposed to any risk of exposure of the source code and related trade secrets that may be gleaned by access to the source code and documentation. Vendors, then, will often agree to an escrow arrangement only when the vendor will be out of business anyway (i.e., insolvency or dissolution). This limited release may not be sufficient for a customer, especially if the software involved is business critical for the customer. In that situation, the customer will want access to the source code upon any event that might reduce or weaken their access to the software; the only event both parties will acknowledge is not appropriate for release ever is a material breach by customer (i.e., reverse engineering of the software for commercial gain).

Who is the potential competitor that makes the vendor so reluctant to turn over source code to customers? Not the customer per se, normally. In most situations, if the customer had the ability or inclination to compete with the vendor, it would have done so in the first place and not taken a license for the vendor's software. More often, the vendor's real concern is that dishonest customer employees, or others having access to the customer's copy of the source code, might take unauthorized advantage of that access. If the customer's physical security is lax, a third-party could, for example, access the code during a customer visit.

The vendor's concern about unauthorized access might be satisfactorily addressed by encrypting the source code and design documents. The encrypted code and a decryption key could be given to a high-level official of the customer. The contract documents could include specific safekeeping requirements (e.g., mandating the use of an off-site safe deposit box) as well as instructions to release the decryption key to the technical people only in specified circumstances, e.g., after notice of a defect in the software and opportunity to cure.

The contract documents could also include a "watchdog" side agreement with the customer official in his personal capacity, obligating him to report to the vendor promptly if the decryption key is ever used, removed from his custody, or misplaced (but perhaps absolving him from any other personal responsibility or liability in connection with being the custodian of the decryption key). The inherent potential for an ethical conflict of interest in such an arrangement could be handled with an express waiver set forth in the documents.

A double-encryption scheme might provide the vendor even more comfort. Double encryption of source code, with the two different decryption keys being entrusted to two different high-level officials of the customer, would have similar benefits and even greater security comfort. To maximize the security, the two officials preferably should not be in a reporting relationship to each other and might even be in different divisions of a large customer.

The customer is likely to be happy with such an arrangement, because the code will be on site and not subject to escrow agent control. The vendor is likely to be happy, because the code will be reasonably safe from prying eyes. From a legal and financial perspective, the escrow arrangements via encryption are simple, safe, and inexpensive.

APPENDICES

Appendix A. Iron Mountain® Three-Party Escrow Service Agreement[1]

Iron Mountain provides flexible, comprehensive escrow services that generate the type of agreement that gives our customers the right level of protection in each unique situation. Iron Mountain is different from other providers in the industry because of our customer-driven approach to technology escrow. With Iron Mountain, the customer's experience is focused on defining his or her own unique needs for a comprehensive service—not on studying and struggling to comprehend the terms, options and add-ons of a variety of pre-packaged agreements.

The benefit of this approach is that it can adapt to meet the needs of a single customer or application today, as well as future ones with requirements that may be quite different. With Iron Mountain, one set of comprehensive escrow services with elective components suited for every situation, covers all the key issues for technology escrow.

At Iron Mountain, we take intellectual property protection seriously and deliver our services with the integrity you and your clients would expect—and, in fact, demand, from a trusted and neutral third party. We don't just vault technology. We provide complete intellectual property management services.

Purpose
Iron Mountain's Three-Party Escrow Service Agreement is generally used when:

- Both parties agree that the highest level of escrow protection is needed.
- The beneficiary needs to sign the agreement.
- The beneficiary needs to negotiate the terms of the agreement and the unique release conditions.
- The beneficiary wants technical verification of the deposit materials.

Key Features
*Iron Mountain's Three-Party Escrow Service Agreements **may** include any of the following:*

- Secure real-time online account management with Escrow Management Center 24x7x365.
- When elected, verification of deposit materials. This includes documentation of the hardware, software environment, utilities, compilers and operating systems needed to access the deposit materials.
- Electronic Depositing of materials.
- Additional advanced types of technical verification including build and usability testing.
- Deposit Tracking Notification—periodic notices to depositors and beneficiaries related to deposit material.
- Escrow Expert consulting services.

(PLEASE DELETE THIS COVER PAGE BEFORE EXECUTING THE AGREEMENT)

IRON MOUNTAIN®

EFFECTIVE DATE:_____

DEPOSIT ACCOUNT NUMBER:_____

<u>THREE-PARTY ESCROW SERVICE AGREEMENT</u>

1. <u>Introduction</u>.
This Three Party Escrow Service Agreement (the "**Agreement**") is entered into by and between _____ (the "**Depositor**"), and by _____ (the "**Beneficiary**") and by Iron Mountain Intellectual Property Management, Inc. ("**Iron Mountain**"). Depositor, Beneficiary, and Iron Mountain may be referred to individually as a "Party" or collectively as the "Parties" throughout this Agreement.

(a) The use of the term services in this Agreement shall refer to Iron Mountain services that facilitate the creation, management, and enforcement of software or other technology escrow accounts as described in Exhibit A attached hereto ("**Services**"). A Party shall request Services under this Agreement by submitting a work request for certain Iron Mountain Services ("**Work Request"**) via written instruction or the online portal maintained at the website located at www.ironmountainconnect.com, or other websites owned or controlled by Iron Mountain that are linked to that website (collectively the "**Iron Mountain Website**").

(b) The Beneficiary and Depositor have, or will have, entered into a license agreement or other agreement conveying intellectual property rights to the Beneficiary, and the Parties intend this Agreement to be considered as supplementary to such agreement, pursuant to <u>Title 11 United States [Bankruptcy] Code, Section 365(n)</u>.

2. <u>Depositor Responsibilities and Representations</u>.

(a) Depositor shall make an initial deposit that is complete and functional of all proprietary technology and other materials covered under this Agreement ("**Deposit Material**") to Iron Mountain within thirty (30) days of the Effective Date. Depositor may also update Deposit Material from time to time during the Term of this Agreement provided a minimum of one (1) complete and functional copy of Deposit Material is deposited with Iron Mountain at all times. At the time of each deposit or update, Depositor will provide an accurate and complete description of all Deposit Material sent to Iron Mountain using the form attached hereto as Exhibit B.

(b) Depositor represents that it lawfully possesses all Deposit Material provided to Iron Mountain under this Agreement free of any liens or encumbrances as of the date of their deposit. Any Deposit Material liens or encumbrances made after their deposit will not prohibit, limit, or alter the rights and obligations of Iron Mountain under this Agreement. Depositor warrants that with respect to the Deposit Material, Iron Mountain's proper administration of this Agreement will not violate the rights of any third parties.

(c) Depositor represents that all Deposit Material is readable and useable in its then current form; if any portion of such Deposit Material is encrypted, the necessary decryption tools and keys to read such material are deposited contemporaneously.

(d) Depositor agrees, upon request by Iron Mountain, in support of Beneficiary's request for verification Services, to promptly complete and return the Escrow Deposit Questionnaire attached hereto as Exhibit Q. Depositor consents to Iron Mountain's performance of any level(s) of verification Services described in Exhibit A attached hereto and Depositor further consents to Iron Mountain's use of a subcontractor to perform verification Services. Any such subcontractor shall be bound by the same confidentiality obligations as Iron Mountain and shall not be a direct competitor to either Depositor or Beneficiary. Iron Mountain shall be responsible for the delivery of Services of any such subcontractor as if Iron Mountain had performed the Services. Depositor represents that all Deposit Material is provided with all rights necessary for Iron Mountain to verify such proprietary technology and materials upon receipt of a Work Request for such Services or agrees to use commercially reasonable efforts to provide Iron Mountain with any necessary use rights or permissions

to use materials necessary to perform verification of the Deposit Material. Depositor agrees to reasonably cooperate with Iron Mountain by providing reasonable access to its technical personnel for verification Services whenever reasonably necessary.

3. Beneficiary Responsibilities and Representations.

(a) Beneficiary acknowledges that, as between Iron Mountain and Beneficiary, Beneficiary assumes all responsibility for the completeness and functionality of all Deposit Material.

(b) Beneficiary may submit a verification Work Request to Iron Mountain for one or more of the Services defined in Exhibit A attached hereto and further consents to Iron Mountain's use of a subcontractor if needed to provide such Services. Beneficiary warrants that Iron Mountain's use of any materials supplied by Beneficiary to perform the verification Services described in Exhibit A is lawful and does not violate the rights of any third parties.

4. Iron Mountain Responsibilities and Representations.

(a) Iron Mountain agrees to use commercially reasonable efforts to provide the Services requested by Authorized Person(s) (as identified in the "Authorized Person(s)/Notices Table" below) representing the Depositor or Beneficiary in a Work Request. Iron Mountain may reject a Work Request (in whole or in part) that does not contain all required information at any time upon notification to the Party originating the Work Request.

(b) Iron Mountain will conduct a visual inspection upon receipt of any Deposit Material and associated Exhibit B. If Iron Mountain determines that the Deposit Material does not match the description provided by Depositor represented in Exhibit B attached hereto, Iron Mountain will notify Depositor of such discrepancies and notate such discrepancy on the Exhibit B.

(c) Iron Mountain will provide notice to the Beneficiary of all Deposit Material that is accepted and deposited into the escrow account under this Agreement.

(d) Iron Mountain will work with a Party who submits any verification Work Request for Deposit Material covered under this Agreement to either fulfill any standard verification Services Work Request or develop a custom Statement of Work ("**SOW**"). Iron Mountain and the requesting Party will mutually agree in writing to an SOW on the following terms and conditions that include but are not limited to: description of Deposit Material to be tested; description of Verification testing; requesting Party responsibilities; Iron Mountain responsibilities; Service Fees; invoice payment instructions; designation of the paying Party; designation of authorized SOW representatives for both the requesting Party and Iron Mountain with name and contact information; and description of any final deliverables prior to the start of any fulfillment activity. After the start of fulfillment activity, each SOW may only be amended or modified in writing with the mutual agreement of both Parties, in accordance with the change control procedures set forth therein.

(e) Iron Mountain will hold and protect Deposit Material in physical or electronic vaults that are either owned or under the control of Iron Mountain, unless otherwise agreed to by the Parties.

(f) Upon receipt of written instructions by both Depositor and Beneficiary, Iron Mountain will permit the replacement or removal of previously submitted Deposit Material. The Party making such request shall be responsible for getting the other Party to approve the joint instructions.

5. Payment.

The Party responsible for payment designated in Exhibit A ("**Paying Party**") shall pay to Iron Mountain all fees as set

forth in the Work Request ("**Service Fees**"). Except as set forth below, all Service Fees are due within thirty (30) calendar days from the date of invoice in U.S. currency and are non-refundable. Iron Mountain may update Service Fees with a ninety (90) calendar day written notice to the Paying Party during the term of this Agreement. The Paying Party is liable for any taxes related specifically to Services purchased under this Agreement or shall present to Iron Mountain an exemption certificate acceptable to the taxing authorities. Applicable taxes shall be billed as a separate item on the invoice. Depositor and Beneficiary agree that if this Agreement terminates during the term for any reason, other than for the fault of Iron Mountain, all prepaid fees shall be non-refundable. Any Service Fees not collected by Iron Mountain when due shall bear interest until paid at a rate of one percent (1%) per month (12% per annum) or the maximum rate permitted by law, whichever is less. Notwithstanding, the non-performance of any obligations of Depositor to deliver Deposit Material under the License Agreement or this Agreement, Iron Mountain is entitled to be paid all Service Fees that accrue during the Term of this Agreement.

6. Term and Termination.

(a) The **"Term"** of this Agreement is for a period of one (1) year from the Effective Date ("**Initial Term**") and will automatically renew for additional one (1) year terms **("Renewal Term")** and continue in full force and effect until one of the following events occur: (i) Depositor and Beneficiary provide Iron Mountain with sixty (60) days' prior written joint notice of their intent to terminate this Agreement; (ii) Beneficiary provides Iron Mountain and Depositor with sixty (60) days' prior written notice of their intent to terminate this Agreement; (iii) the Agreement terminates under another provision of this Agreement; or (iv) any time after the Initial Term, Iron Mountain provides a sixty (60) days' prior written notice to the Depositor and Beneficiary of Iron Mountain's intent to terminate this Agreement. If the Effective Date is not specified above, then the last date noted on the signature blocks of this Agreement shall be the Effective Date.

(b) Unless the express terms of this Agreement provide otherwise, upon termination of this Agreement, Iron Mountain shall return the Deposit Material to the Depositor. If reasonable attempts to return the Deposit Material to Depositor are unsuccessful, Iron Mountain shall destroy the Deposit Material.

(c) In the event of the nonpayment of undisputed Service Fees owed to Iron Mountain, Iron Mountain shall provide all Parties to this Agreement with written notice of Iron Mountain's intent to terminate this Agreement. Any Party to this Agreement shall have the right to make the payment to Iron Mountain to cure the default. If the past due payment is not received in full by Iron Mountain within thirty (30) calendar days of the date of such written notice, then Iron Mountain shall have the right to terminate this Agreement at any time thereafter by sending written notice to all Parties. Iron Mountain shall have no obligation to perform the Services under this Agreement (except those obligations that survive termination of this Agreement) so long as any undisputed Service Fees due Iron Mountain under this Agreement remain unpaid.

7. General Indemnity.

Subject to Section 10 and 11, each Party shall defend, indemnify and hold harmless the others, their corporate affiliates and their respective officers, directors, employees, and agents and their respective successors and assigns from and against any and all claims, losses, liabilities, damages, and expenses (including, without limitation, reasonable attorneys' fees), arising under this Agreement from the negligent or intentional acts or omissions of the indemnifying Party or its subcontractors, or the officers, directors, employees, agents, successors and assigns of any of them.

8. Warranties.

(a) IRON MOUNTAIN WARRANTS ANY AND ALL SERVICES PROVIDED HEREUNDER SHALL BE PERFORMED IN A WORKMANLIKE MANNER. EXCEPT AS SPECIFIED IN THIS SECTION, 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, ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW. AN AGGRIEVED PARTY MUST NOTIFY IRON MOUNTAIN PROMPTLY OF ANY CLAIMED BREACH OF ANY WARRANTIES AND SUCH PARTY'S SOLE AND EXCLUSIVE REMEDY FOR BREACH OF WARRANTY SHALL BE RETURN OF THE PORTION OF THE FEES PAID TO IRON MOUNTAIN 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. THE WARRANTY PROVIDED IS SUBJECT TO THE LIMITATION OF LIABILITY SET FORTH IN THIS AGREEMENT.

(b) Depositor warrants that all Depositor information provided hereunder is accurate and reliable and undertakes to promptly correct and update such Depositor information during the Term of this Agreement.

(c) Beneficiary warrants that all Beneficiary information provided hereunder is accurate and reliable and undertakes to promptly correct and update such Beneficiary information during the Term of this Agreement.

(d) Ownership Warranty. Depositor warrants that it is the owner or legal custodian of the Deposit Material and has full authority to store the Deposit Material and direct their disposition in accordance with the terms of this Agreement. Depositor shall reimburse Iron Mountain for any expenses reasonably incurred by Iron Mountain (including reasonable legal fees) by reason of Iron Mountain's compliance with the instructions of Depositor in the event of a dispute concerning the ownership, custody or disposition of Deposit Material stored by Depositor with Iron Mountain.

9. <u>Confidential Information.</u>

Iron Mountain shall have the obligation to reasonably protect the confidentiality of the Deposit Material. Except as provided in this Agreement Iron Mountain shall not use or disclose the Deposit Material. Iron Mountain shall not disclose the terms of this Agreement to any third Party. If Iron Mountain receives a subpoena or any other order from a court or other judicial tribunal pertaining to the disclosure or release of the Deposit Material, Iron Mountain will notify the Parties to this Agreement unless prohibited by law. After notifying the Parties, Iron Mountain may comply in good faith with such order. It shall be the responsibility of Depositor or Beneficiary to challenge any such order; provided, however, that Iron Mountain does not waive its rights to present its position with respect to any such order. Iron Mountain will cooperate with the Depositor or Beneficiary, as applicable, to support efforts to quash or limit any subpoena, at such party's expense. Any party requesting additional assistance shall pay Iron Mountain's standard charges or as quoted upon submission of a detailed request.

10. <u>Limitation of Liability.</u>

NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT, ALL LIABILITY, IF ANY, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, OF ANY PARTY TO THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT EQUAL TO ONE YEAR OF FEES PAID OR OWED TO IRON MOUNTAIN UNDER THIS AGREEMENT. IF CLAIM OR LOSS IS MADE IN RELATION TO A SPECIFIC DEPOSIT OR DEPOSITS, SUCH LIABILITY SHALL BE LIMITED TO THE FEES RELATED SPECIFICALLY TO SUCH DEPOSITS. THIS LIMIT SHALL NOT APPLY TO ANY PARTY FOR: (I) ANY CLAIMS OF INFRINGEMENT OF ANY PATENT, COPYRIGHT, OR TRADEMARK; (II) LIABILITY FOR DEATH OR BODILY INJURY; (III) PROVEN THEFT; OR (IV) PROVEN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

11. <u>Consequential Damages Waiver.</u>

IN NO EVENT SHALL ANY PARTY TO THIS AGREEMENT BE LIABLE TO ANOTHER PARTY FOR ANY

INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, LOST PROFITS OR LOST DATA OR INFORMATION, ANY COSTS OR EXPENSES FOR THE PROCUREMENT OF SUBSTITUTE SERVICES, OR ANY OTHER INDIRECT DAMAGES, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE EVEN IF THE POSSIBILITY THEREOF MAY BE KNOWN IN ADVANCE TO ONE OR MORE PARTIES.

12. General.

(a) Incorporation of Work Requests. All valid Depositor and Beneficiary Work Requests are incorporated into this Agreement.

(b) Purchase Orders. In the event that the Paying Party issues a purchase order or other instrument used to pay Service Fees to Iron Mountain, any terms and conditions set forth in the purchase order which constitute terms and conditions which are in addition to those set forth in this Agreement or which establish conflicting terms and conditions to those set forth in this Agreement are expressly rejected by Iron Mountain.

(c) Right to Make Copies. Iron Mountain shall have the right to make copies of all Deposit Material as reasonably necessary to perform the Services. Iron Mountain shall copy all copyright, nondisclosure, and other proprietary notices and titles contained on Deposit Material onto any copies made by Iron Mountain. Any copying expenses incurred by Iron Mountain as a result of a Work Request to copy will be borne by the Party requesting the copies. Iron Mountain may request Depositor's reasonable cooperation in promptly copying Deposit Material in order for Iron Mountain to perform this Agreement.

(d) Choice of Law. The validity, interpretation, and performance of this Agreement shall be controlled by and construed under the laws of the Commonwealth of Massachusetts, USA, as if performed wholly within the state and without giving effect to the principles of conflicts of laws.

(e) Authorized Person(s). Depositor and Beneficiary must each authorize and designate one person whose actions will legally bind such party ("Authorized Person" who shall be identified in the Authorized Persons (s) Notices Table of this Agreement) and who may manage the Iron Mountain escrow account through the Iron Mountain website or written instruction. The Authorized Person for each the Depositor and Beneficiary will maintain the accuracy of their name and contact information provided to Iron Mountain during the term of this Agreement.

(f) Right to Rely on Instructions. Iron Mountain may act in reliance upon any instruction, instrument, or signature reasonably believed by Iron Mountain to be genuine and from an Authorized Person(s), officer, or other employee of a Party. Iron Mountain may assume that such representative of a Party to this Agreement who gives any written notice, request, or instruction has the authority to do so. Iron Mountain will not be required to inquire into the truth or evaluate the merit of any statement or representation contained in any notice or document reasonably believed to be from such representative. With respect to Release and Destruction of Deposit Materials, Iron Mountain shall rely on an Authorized Person(s).

(g) Force Majeure. No Party shall be liable for any delay or failure in performance due to events outside the defaulting Party's reasonable control, including without limitation acts of God, earthquake, labor disputes, shortages of supplies, riots, war, acts of terrorism, fire, epidemics, or delays of common carriers or other circumstances beyond its reasonable control. The obligations and rights of the excused Party shall be extended on a day-to-day basis for the time period equal to the period of the excusable delay.

(h) Notices. All notices regarding Exhibit C (release) shall be sent by commercial express mail or other commercially appropriate means that provide prompt delivery and require proof of delivery. All other correspondence, including invoices, payments, and other documents and communications, may be sent electronically or via regular mail. The Parties

shall have the right to rely on the last known address of the other Parties. Any correctly addressed notice to last known address of the other Parties that is relied on herein and that is refused, unclaimed, or undeliverable because of an act or omission of the Party to be notified as provided herein shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by electronic mail, the postal authorities by mail, through messenger or commercial express delivery services.

(i) <u>No Waiver</u>. No waiver of rights under this Agreement by any Party shall constitute a subsequent waiver of this or any other right under this Agreement.

(j) <u>Assignment</u>. No assignment of this Agreement by Depositor or Beneficiary or any rights or obligations of Depositor or Beneficiary under this Agreement is permitted without the written consent of Iron Mountain, which shall not be unreasonably withheld or delayed. Iron Mountain shall have no obligation in performing this Agreement to recognize any successor or assign of Depositor or Beneficiary unless Iron Mountain receives clear, authoritative and conclusive written evidence of the change of parties.

(k) <u>Severability</u>. In the event any of the terms of this Agreement become or are declared to be illegal or otherwise unenforceable by any court of competent jurisdiction, such term(s) shall be null and void and shall be deemed deleted from this Agreement. All remaining terms of this Agreement shall remain in full force and effect. If this paragraph becomes applicable and, as a result, the value of this Agreement is materially impaired for any Party, as determined by such Party in its sole discretion, then the affected Party may terminate this Agreement by written notice to the others.

(l) <u>Independent Contractor Relationship</u>. Depositor and Beneficiary understand, acknowledge, and agree that Iron Mountain's relationship with Depositor and Beneficiary will be that of an independent contractor and that nothing in this Agreement is intended to or should be construed to create a partnership, joint venture, or employment relationship.

(m) <u>Attorneys' Fees</u>. In any suit or proceeding between the Parties relating to this Agreement, the prevailing Party will have the right to recover from the other(s) its costs and reasonable fees and expenses of attorneys, accountants, and other professionals incurred in connection with the suit or proceeding, including costs, fees and expenses upon appeal, separately from and in addition to any other amount included in such judgment. This provision is intended to be severable from the other provisions of this Agreement, and shall survive and not be merged into any such judgment.

(n) <u>No Agency</u>. No Party has the right or authority to, and shall not, assume or create any obligation of any nature whatsoever on behalf of the other Parties or bind the other Parties in any respect whatsoever.

(o) <u>Disputes</u>. Any dispute, difference or question relating to or arising among any of the Parties concerning the construction, meaning, effect or implementation of this Agreement or the rights or obligations of any Party hereof will be submitted to, and settled by arbitration by a single arbitrator chosen by the corresponding Regional Office of the American Arbitration Association in accordance with the Commercial Rules of the American Arbitration Association. The Parties shall submit briefs of no more than 10 pages and the arbitration hearing shall be limited to two (2) days maximum. The arbitrator shall apply Massachusetts law. Unless otherwise agreed by the Parties, arbitration will take place in Boston, Massachusetts, 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 regular 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 Beneficiary refuse to submit to arbitration, the matter shall not be submitted to arbitration and Iron Mountain may submit the matter to any court of competent jurisdiction for an interpleader or similar action. Unless adjudged otherwise, any costs of arbitration incurred by Iron Mountain, including reasonable attorney's fees and costs, shall be divided equally and paid by Depositor and Beneficiary.

(p) <u>Regulations</u>. All Parties are responsible for and warrant, to the extent of their individual actions or omissions, compliance with all applicable laws, rules and regulations, including but not limited to: customs laws; import; export and re-

export laws; and government regulations of any country from or to which the Deposit Material may be delivered in accordance with the provisions of this Agreement.

(q) <u>No Third Party Rights</u>. This Agreement is made solely for the benefit of the Parties to this Agreement and their respective permitted successors and assigns, and no other person or entity shall have or acquire any right by virtue of this Agreement unless otherwise agreed to by all the parties hereto.

(r) <u>Entire Agreement</u>. The Parties agree that this Agreement, which includes all the Exhibits attached hereto and all valid Work Requests submitted by the Parties, is the complete agreement between the Parties hereto concerning the subject matter of this Agreement and replaces any prior or contemporaneous oral or written communications between the Parties. There are no conditions, understandings, agreements, representations, or warranties, expressed or implied, which are not specified herein. Each of the Parties herein represents and warrants that the execution, delivery, and performance of this Agreement has been duly authorized and signed by a person who meets statutory or other binding approval to sign on behalf of its business organization as named in this Agreement. This Agreement may only be modified by mutual written agreement of the Parties.

(s) <u>Counterparts</u>. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

(t) <u>Survival</u>. Sections 6 (Term and Termination), 7 (General Indemnity), 8 (Warranties), 9 (Confidential Information), 10 (Limitation of Liability) 11(Consequential Damages Waiver), and 12 (General) of this Agreement shall survive termination of this Agreement or any Exhibit attached hereto.

Note: If contracting electronically via the online portal, clicking the "I Accept" button displayed as part of the ordering process, evidences agreement to the preceding terms and conditions (the "**Agreement**"). If you are entering into this Agreement via the online portal on behalf of a company or other legal entity, you represent that you have the authority to bind such entity to these terms and conditions, in which case the terms "you" or "your" shall refer to such entity. If you do not have such authority, or if you do not agree with these terms and conditions, you must select the "I Decline" button.

<div align="center">

DEPOSITOR
</div>

COMPANY NAME:

SIGNATURE:

PRINT NAME:

TITLE:

DATE:

EMAIL ADDRESS

<div align="center">

BENEFICIARY
</div>

COMPANY NAME:

SIGNATURE:

PRINT NAME:

TITLE:

DATE:

EMAIL ADDRESS:

IRON MOUNTAIN INTELLECTUAL PROPERTY MANAGEMENT, INC.

SIGNATURE:

PRINT NAME:

TITLE:

DATE:

EMAIL ADDRESS: mailto:ipmclientservices@ironmountain.com

NOTE: AUTHORIZED PERSON(S)/NOTICES TABLE, BILLING CONTACT INFORMATION TABLE AND EXHIBITS FOLLOW

DEPOSITOR—AUTHORIZED PERSON(S)/NOTICES TABLE

Provide the name(s) and contact information of the Authorized Person(s) under this Agreement. All notices will be sent to the person(s) at the address(es) set forth below. This is required information.

COMPANY:

ADMINISTRATIVE CONTACT

PRINT NAME:

TITLE:

EMAIL ADDRESS

ADDRESS 1

ADDRESS 2

CITY/STATE/PROVINCE

POSTAL/ZIP CODE

PHONE NUMBER

FAX NUMBER

BENEFICIARY—AUTHORIZED PERSON(S)/NOTICES TABLE

Provide the name(s) and contact information of the Authorized Person(s) under this Agreement. All notices will be sent to the person(s) at the address(es) set forth below. This is required information.

COMPANY:

ADMINISTRATIVE CONTACT

PRINT NAME:

TITLE:

EMAIL ADDRESS

ADDRESS 1

ADDRESS 2

CITY/STATE/PROVINCE

POSTAL/ZIP CODE

PHONE NUMBER

FAX NUMBER

IRON MOUNTAIN INTELLECTUAL PROPERTY MANAGEMENT, INC.
All notices should be sent to mailto:ipmclientservices@ironmountain.com OR
Iron Mountain Intellectual Property Management, Inc., Attn: Client Services
2100 Norcross Parkway, Suite 150
Norcross, Georgia, 30071, USA.
Telephone: 800-875-5669
Facsimile: 770-239-9201

BILLING CONTACT INFORMATION TABLE
> **Please provide the name and contact information of the Billing Contact under this Agreement. All Invoices will be sent to this individual at the address set forth below.**

DEPOSITOR

PRINT NAME:

TITLE:

EMAIL ADDRESS

STREET ADDRESS

PROVINCE/CITY/STATE

POSTAL/ZIP CODE

PHONE NUMBER

FAX NUMBER

PURCHASE ORDER #

SIGNATURE:

PRINT NAME:

TITLE:

DATE:

EMAIL ADDRESS

BENEFICIARY

PRINT NAME:

TITLE:

EMAIL ADDRESS

STREET ADDRESS

PROVINCE/CITY/STATE

POSTAL/ZIP CODE

PHONE NUMBER

FAX NUMBER

PURCHASE ORDER #

SIGNATURE:

PRINT NAME:

TITLE:

DATE:

EMAIL ADDRESS:

MUST BE COMPLETED EXHIBIT A—Escrow Service Work Request—Deposit Account Number:

SERVICE	SERVICE DESCRIPTION—THREE PARTY ESCROW AGREEMENT	ONE-TIME FEES	ANNUAL FEES	PAYING PARTY
Check box(es) to order service	All services are listed below. Services in shaded tables are required for every new escrow account set up. Some services may not be available under the Agreement.			**Check box to identify the Paying Party for each service below.**
Setup Fee	Iron Mountain will setup a new escrow deposit account using a standard escrow agreement. Custom contracts are subject to the Custom Contract Fee noted below.	**$1250**		**[] Depositor - OR - [] Beneficiary**
Deposit Account Fee- including Escrow Management Center Access	Iron Mountain will set up one deposit account to manage and administrate access to Deposit Material that will be securely stored in controlled media vaults. Furthermore, Iron Mountain will provide account services that include unlimited deposits, electronic vaulting, access to Iron Mountain Connect™ Escrow Management Center for secure online account management, submission of electronic Work Requests, and communication of status. A Client Manager will be assigned to each deposit account and provide training upon request to facilitate secure Internet access to the account and ensure fulfillment of Work Requests. An oversize fee may apply.		**$1,000**	**[] Depositor - OR— [] Beneficiary**
Beneficiary Fee including Escrow Management Center Access	Iron Mountain will fulfill a Work Request to add a Beneficiary to an escrow deposit account and manage access rights associated with the account. Beneficiary will have access to Iron Mountain Connect™ Escrow Management Center for secure online account management, submission of electronic Work Requests, and communication of status. A Client Manager will be assigned to each deposit account and provide training upon request to facilitate secure Internet access to the account and ensure fulfillment of Work Requests.		$700	**[] Depositor - OR— [] Beneficiary**
[] Add Deposit Tracking Notification	At least semi-annually, Iron Mountain will send an update reminder to Depositor. Thereafter, Beneficiary will be notified of last deposit. .	**N/A**	**$375**	**[] Depositor - OR - [] Beneficiary**
[] Add File List Test	Iron Mountain will fulfill a Work Request to perform a File List Test, which includes analyzing deposit media readability, file listing,	**$2,500**	**N/A**	**[] Depositor - OR - [] Benefi-**

	creation of file classification table, virus scan, and assurance of completed deposit questionnaire. A final report will be sent to the Paying Party regarding the Deposit Material to ensure consistency between Depositor's representations (i.e., Exhibit B and Supplementary Questionnaire) and stored Deposit Material.			**ciary**
[] Add Level 1 - Inventory Test	Iron Mountain will perform an Inventory Test on the initial deposit, which includes Analyzing deposit media readability, virus scanning, developing file classification tables, identifying the presence/absence of build instructions, and identifying materials required to recreate the Depositor's software development environment. Output includes a report which will include build instructions, file classification tables and listings. In addition, the report will list required software development materials, including, without limitation, required source code languages and compilers, third-party software, libraries, operating systems, and hardware, as well as Iron Mountain's analysis of the deposit. Fee Contingencies Enclosed.	**$5,000**	N/A	**[] Depositor - OR - [] Beneficiary**
[] Add Level 2 - Deposit Compile Test	Iron Mountain will fulfill a Work Request to perform a Deposit Compile Test, which includes the Inventory Test as described above plus recreating the Depositor's software development environment, compiling source files and modules, linking libraries and recreating executable code, pass/fail determination, creation of comprehensive build instructions with a final report sent to the Paying Party regarding the Deposit Material. The Paying Party and Iron Mountain will agree on a custom Statement of Work ("SOW") prior to the start of fulfillment.	**Based on SOW**	N/A	**[] Depositor - OR - [] Beneficiary**
[] Add Level 3 - Deposit Usability Test—Binary Comparison	Iron Mountain will fulfill a Work Request to perform one Deposit Compile Test Binary Comparison which includes a comparison of the files built from the Deposit Compile Test to the actual licensed technology on the Beneficiary's site to ensure a full match in file size, with a final report sent to the Requesting Party regarding Deposit Material. The Paying Party and Iron Mountain will agree on a custom Statement of Work ("SOW") prior to the start of fulfillment.	**Based on SOW**	N/A	**[] Depositor - OR - [] Beneficiary**
[] Add Level 4 - Deposit Usability Test—Full Usability Test	Iron Mountain will fulfill a Work Request to perform one Deposit Compile Test Full Usability which includes a confirmation that the built applications work properly when installed. A final report will be sent to the Paying Party regarding the Deposit Material. The Paying Party and Iron Mountain will agree on a custom Statement of Work ("SOW") prior to the start of fulfillment.	**Based on SOW**	N/A	**[] Depositor - OR - [] Beneficiary**
[] Add Dual/Remote Vaulting	Iron Mountain will fulfill a Work Request to store deposit materials in one additional location as defined within the Service Agreement. Duplicate storage request may be in the form of either physical media or electronic storage.	N/A	**$500**	**[] Depositor - OR - [] Beneficiary**
[] Release Deposit Material	Iron Mountain will process a Work Request to release Deposit Material by following the specific procedures defined in Exhibit C "Release of Deposit Materials" the Escrow Service Agreement.	**$500**	N/A	**[] Depositor - OR - [] Beneficiary**
[] Add Custom Services	Iron Mountain will provide its Escrow Expert consulting based on a custom SOW mutually agreed to by all Parties.	**$175/hour**	N/A	**[] Depositor - OR - [] Beneficiary**
[] Custom	Custom contracts are subject to the Custom Contract Fee, which	**$500**	N/A	**[] Depositor -**

Contract Fee   covers the review and processing of custom or modified contracts.   **OR - [] Benefi-
ciary**

Note: Parties may submit Work Requests via written instruction or electronically through the online portal.
EXHIBIT B DEPOSIT MATERIAL DESCRIPTION

COMPANY   NAME: _____   **DEPOSIT   ACCOUNT
NUMBER:**_____
DEPOSIT NAME_____**AND DEPOSIT VERSION**_____
(Deposit Name will appear in account history reports)
DEPOSIT MEDIA (PLEASE LABEL ALL MEDIA WITH THE DEPOSIT NAME PROVIDED ABOVE)

MEDIA TYPE	QUANTITY	MEDIA TYPE	QUANTITY
[] CD-ROM / DVD		[] 3.5" Floppy Disk	
[] DLT Tape		[] Documentation	
[] DAT Tape		[] Hard Drive / CPU	
		[] Circuit Board	

**TOTAL SIZE OF
TRANSMISSION
(SPECIFY IN BYTES)**

DEPOSIT ENCRYPTION (Please check either "Yes" or "No" below and complete as appropriate)
Is the media or are any of the files encrypted? [] Yes or [] No
    **If yes, please include any passwords and decryption tools description below. Please also deposit all necessary en-
cryption software with this deposit.**
Encryption tool name _____ Version _____
Hardware required _____
Software required _____
Other required information _____
DEPOSIT CERTIFICATION (Please check the box below to Certify and Provide your Contact Information)

    **Note: If Depositor is physically sending Deposit Material to Iron Mountain, please label all media and mail all
Deposit Material with the appropriate Exhibit B via commercial express carrier to the following address:**
Iron Mountain Intellectual Property Management, Inc.

Attn: Vault Administration
2100 Norcross Parkway, Suite 150
Norcross, GA 30071
Telephone: 800-875-5669
Facsimile: 770- 239-9201

EXHIBIT C RELEASE OF DEPOSIT MATERIALS Deposit Account Number:_____

Iron Mountain will use the following procedures to process any Beneficiary Work Request to release Deposit Material. All notices under this Exhibit C shall be sent pursuant to the terms of Section 12(h) Notices.

1. Release Conditions.The Depositor and Beneficiary agree that a Work Request for the release of the Deposit Material shall be based solely on one or more of the following conditions (defined as "**Release Conditions**"):

(i) Depositor's breach of the license agreement or other agreement between the Depositor and the Beneficiary regulating the use of the Deposit Material covered under this Agreement; or

(ii) Failure of the Depositor to function as a going concern or to operate in the ordinary course; or

(iii) Depositor is subject to voluntary or involuntary bankruptcy.

2. Release Work Request.A Beneficiary may submit a Work Request to Iron Mountain to release the Deposit Material covered under this Agreement. Iron Mountain will send a written notice of this Beneficiary Work Request within five (5) business days to the Depositor's Authorized Person(s).

3. Contrary Instructions.From the date Iron Mountain mails written notice of the Beneficiary Work Request to release Deposit Material covered under this Agreement, Depositor authorized representative(s) shall have ten (10) business days to deliver to Iron Mountain contrary instructions. Contrary instructions shall mean the written representation by Depositor that a Release Condition has not occurred or has been cured ("**Contrary Instructions**"). Contrary Instructions shall be on company letterhead and signed by an authorized Depositor representative. Upon receipt of Contrary Instructions, Iron Mountain shall promptly send a copy to Beneficiary's Authorized Person(s). Additionally, Iron Mountain shall notify both Depositor and Beneficiary Authorized Person(s) that there is a dispute to be resolved pursuant to the Disputes provisions of this Agreement. Iron Mountain will continue to store Deposit Material without release pending (i) joint instructions from Depositor and Beneficiary with instructions to release the Deposit Material; or (ii) dispute resolution pursuant to the Disputes provisions of this Agreement; or (iii) receipt of an order from a court of competent jurisdiction.

4. Release of Deposit Material.If Iron Mountain does not receive Contrary Instructions from an authorized Depositor representative, Iron Mountain is authorized to release Deposit Material to the Beneficiary or, if more than one Beneficiary is registered to the deposit, to release a copy of Deposit Material to the Beneficiary. Iron Mountain is entitled to receive any undisputed, unpaid Service Fees due Iron Mountain from the Parties before fulfilling the Work Request to release Deposit Material covered under this Agreement. Any Party may cure a default of payment of Service Fees.

5. Termination of Agreement Upon Release.This Agreement will terminate upon the release of Deposit Material held by

Iron Mountain.

6. <u>Right to Use Following Release.</u>Beneficiary has the right under this Agreement to use the Deposit Material for the sole purpose of continuing the benefits afforded to Beneficiary by the License Agreement. Notwithstanding, the Beneficiary shall not have access to the Deposit Material unless there is a release of the Deposit Material in accordance with this Agreement. Beneficiary shall be obligated to maintain the confidentiality of the released Deposit Material.

<center>**EXHIBIT Q ESCROW DEPOSIT QUESTIONNAIRE**</center>

Introduction

From time to time, technology escrow beneficiaries may exercise their right to perform verification services. This is a service that Iron Mountain provides for the purpose of validating relevance, completeness, currency, accuracy and functionality of deposit materials.

Purpose of Questionnaire

In order for Iron Mountain to determine the deposit material requirements and to quote fees associated with verification services, a completed deposit questionnaire is requested. It is the responsibility of the escrow depositor to complete the questionnaire.

Instructions

Please complete the questionnaire in its entirety by answering every question with accurate data. Upon completion, please return the completed questionnaire to the beneficiary asking for its completion, or e-mail it to Iron Mountain to the attention of mailto:verification@ironmountain.com

Escrow Deposit Questionnaire

General Description

1. What is the general function of the software to be placed into escrow?

2. On what media will the source code be delivered?

3. What is the size of the deposit in megabytes?

Requirements for the Execution of the Software Protected by the Deposit

1. What are the system hardware requirements to successfully execute the software? (memory, disk space, etc.)

2. How many machines are required to completely set up the software?

3. What are the software and system software requirements, to execute the software and verify correct operation?

Requirements for the Assembly of the Deposit

1. Describe the nature of the source code in the deposit. (Does the deposit include interpreted code, compiled source, or a mixture? How do the different parts of the deposit relate to each other?)

2. How many build processes are there?

3. How many unique build environments are required to assemble the material in the escrow deposit into the deliverables?

4. What hardware is required for each build environment to compile the software? (including memory, disk space, etc.)

5. What operating systems (including versions) are used during compilation? Is the software executed on any other operating systems/version?

6. How many separate deliverable components (executables, share libraries, etc.) are built?

7. What compilers/linkers/other tools (brand and version) are necessary to build the application?

8. What, if any, third-party libraries are used to build the software?

9. How long does a complete build of the software take? How much of that time requires some form of human interaction and how much is automated?

10. Do you have a formal build document describing the necessary steps for system configuration and compilation?

11. Do you have an internal QA process? If so, please give a brief description of the testing process.

12. Please list the appropriate technical person(s) Iron Mountain may contact regarding this set of escrow deposit materials.

Please provide your technical verification contact information below:
COMPANY:

SIGNATURE:

PRINT NAME:

ADDRESS 1:

ADDRESS 2:

CITY, STATE, ZIP

TELEPHONE:

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