**SOFTWARE ESCROW AGREEMENT**

*[****Overview:*** *A software escrow is a service that helps protect all parties involved in a software license by having a neutral 3rd party escrow agent holds source code, data, and documentation until a mutually-agreed-upon*

 *event* occurs.*]*

 THIS AGREEMENT (“Agreement”) is made as of the date of the last signature hereto by and among SOFTWARE PATENT CO., a California corporation whose address is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“SOFTWARE PATENT CO.”), BUSINESS METHOD PATENT CO., a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(State) corporation whose address is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“BUSINESS METHOD PATENT CO.”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_ whose address is \_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Escrow Agent”).

**RECITALS:**

 A. BUSINESS METHOD PATENT CO. is a licensee of the SOFTWARE PATENT CO. software indicated on Exhibit A, as may be amended from time to time (the “SOFTWARE PATENT CO. Software”), pursuant to that certain purchase agreement dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, by and between SOFTWARE PATENT CO. and BUSINESS METHOD PATENT CO. (the “Purchase Agreement”).

 B. The parties desire to place certain computer software and related materials with the Escrow Agent and for the Escrow Agent to act with respect to such computer software and related materials in accordance with this Agreement.

 C. Unless otherwise defined herein, all capitalized terms shall have the meanings ascribed to them in the Purchase Agreement.

 Therefore, in consideration of the promises and mutual covenants below, SOFTWARE PATENT CO., BUSINESS METHOD PATENT CO. and the Escrow Agent agree as follows:

1. Escrow Items.

 SOFTWARE PATENT CO., at no additional cost to BUSINESS METHOD PATENT CO., will promptly place upon BUSINESS METHOD PATENT CO.’s issuance of any Purchase Order for SOFTWARE PATENT CO. Software under Section 2.2(a) of the Purchase Agreement good working order copies of the source code, object code modules for which SOFTWARE PATENT CO. has no source code and documentation for such SOFTWARE PATENT CO. Software (to the extent SOFTWARE PATENT CO. has the right to make such deposit without violating the rights of any other person) (collectively the “Escrow Items”) under the control of the Escrow Agent pursuant to the terms and conditions contained herein. Each such deposit shall be accompanied by a description of any public domain software incorporated into the deposited Escrow Items, and of any software which SOFTWARE PATENT CO. has incorporated into the deposited Escrow Items under license from others. In the latter case, SOFTWARE PATENT CO. shall: (i) deposit such licensed software only to the extent (if any) to which SOFTWARE PATENT CO. is entitled to do so under such license; (ii) specify which portions of such licensed software have been included in, and excluded from, the deposit; (iii) identify the owner or other licensor of such software; and (iv) to the best of SOFTWARE PATENT CO.’s knowledge at the time, described how (if at all) BUSINESS METHOD PATENT CO. may seek to license such software after release of the Escrow Items to BUSINESS METHOD PATENT CO. under this Agreement. BUSINESS METHOD PATENT CO.’s rights to Escrow Items under this Agreement shall at all times be subject to SOFTWARE PATENT CO.’s rights thereto, as those rights may change from time to time. Deposits of Escrow Items related to SOFTWARE PATENT CO. Software shall be made: (i) monthly while the related SOFTWARE PATENT CO. Software is a Pre-released Product; (ii) upon the related SOFTWARE PATENT CO. Software’s designation as a Released Product; and (iii) upon SOFTWARE PATENT CO.’s release (if ever) of each new version of the related SOFTWARE PATENT CO. Software, provided that BUSINESS METHOD PATENT CO. is entitled to such new version under the Purchase Agreement or the Maintenance Agreement.

 SOFTWARE PATENT CO. shall revise and update the Escrow Items semi-annually or as necessary to keep them current and in good working order, provided that SOFTWARE PATENT CO. shall have no obligation to BUSINESS METHOD PATENT CO. to revise or update such copies after the later of: (i) the expiration of SOFTWARE PATENT CO.’s warranty period on the SOFTWARE PATENT CO. Software or (ii) BUSINESS METHOD PATENT CO. ceases purchasing maintenance services for the SOFTWARE PATENT CO. Software from SOFTWARE PATENT CO.. On the first business day of each calendar year, BUSINESS METHOD PATENT CO. shall have the right, upon fifteen (15) days’ prior written request and at BUSINESS METHOD PATENT CO.’s cost, to have SOFTWARE PATENT CO. compile and test such copies, revisions and updates in BUSINESS METHOD PATENT CO.’s presence.

2. Release Conditions.

 BUSINESS METHOD PATENT CO. shall be authorized to submit to the Escrow Agent the Officer’s Certificate referred to in Section 4.1 below as to all of the deposited Escrow Items upon the occurrence of one of the following release conditions during the term of the Purchase Agreement or the Maintenance Agreement:

 2.1 SOFTWARE PATENT CO.’s insolvency or inability to make timely payment to its creditors, the filing of a petition by or against SOFTWARE PATENT CO. under any chapter of the federal bankruptcy laws, or upon SOFTWARE PATENT CO.’s making of a general assignment for the benefit of its creditors;

 2.2 the acquisition of a beneficial interest in a majority of SOFTWARE PATENT CO.’s voting securities, at any time before the registration of SOFTWARE PATENT CO. common stock under the Securities Act of 1933 (other than registration of shares solely for issuance under employee benefit plans), by any other nationally or internationally recognized investment banking firm;

 2.3 the failure by SOFTWARE PATENT CO. to comply with a provision or provisions of the Purchase Agreement, or the Maintenance Agreement attached as Exhibit C thereto, which failure or failures singly or in the aggregate have a material adverse effect on BUSINESS METHOD PATENT CO. and which failure or failures continue without cure for a period of sixty (60) days following written notice thereof from BUSINESS METHOD PATENT CO.; or

 2.4 the failure by SOFTWARE PATENT CO., within ten (10) days after BUSINESS METHOD PATENT CO.’s request to SOFTWARE PATENT CO. to perform any of SOFTWARE PATENT CO.’s obligations under Section 3.8(c), 5.1, 5.2, 5.3 or 7.2 of the Purchase Agreement relating to the attainment of Critical Milestones or the correction of reported defects in the performance of a Product, to devote personnel, equipment and other resources sufficient to make a reasonable effort to perform such obligations.

3. Duties of Escrow Agent.

 3.1 The Escrow Agent’s duties hereunder are limited to:

 (a) Safeguarding the Escrow Items against disclosure to or access by any person or entity except as expressly provided herein, including the safekeeping of the Escrow Items in a safety deposit box in a commercial banking institution or in a secure warehouse specializing in the storage of confidential documents including computer media;

 (b) Notifying SOFTWARE PATENT CO. and BUSINESS METHOD PATENT CO. that it has received the Escrow Items;

 (c) Notifying SOFTWARE PATENT CO. and BUSINESS METHOD PATENT CO. that it has received from SOFTWARE PATENT CO. any undated version of the Escrow Items;

 (d) Notifying SOFTWARE PATENT CO. in accordance with Section 4.2 below; and

 (e) Disposition of the Escrow Items in accordance with these instructions.

 3.2 The Escrow Agent is not responsible for verifying the accuracy or completeness of the Escrow Items. The Escrow Agent’s performance hereunder is excused when it is prevented by acts of God and other causes beyond its reasonable control.

4. Release of Escrow Items.

 4.1 Upon receipt of a certificate (the “Officer’s Certificate”) signed by an Officer of BUSINESS METHOD PATENT CO. stating that BUSINESS METHOD PATENT CO. has the right to receive all of the Escrow Items, the Escrow Agent shall, subject to Section 4.4 below, deliver all of the Escrow Items to BUSINESS METHOD PATENT CO.

 4.2 At the time of delivery to the Escrow Agent of any Officer’s Certificate, BUSINESS METHOD PATENT CO. shall deliver a duplicate copy of such certificate to SOFTWARE PATENT CO. and for a period of thirty (30) days after the receipt of such Officer’s Certificate by the Escrow Agent, the Escrow Agent shall make no delivery of the Escrow Items pursuant to Section 4.1 hereof unless the Escrow Agent shall have received written authorization from SOFTWARE PATENT CO. to make such delivery. After the expiration of such thirty-day period, the Escrow Agent shall deliver the Escrow Items in accordance with Section 4.1 hereof unless the Escrow Agent shall have received a written objection by SOFTWARE PATENT CO. to such delivery prior to the expiration of such thirty-day period. SOFTWARE PATENT CO. shall deliver a copy of any such objection to BUSINESS METHOD PATENT CO. at the same time it delivers such objection to the Escrow Agent.

 4.3 If SOFTWARE PATENT CO. shall object to the delivery of the Escrow Items in writing, BUSINESS METHOD PATENT CO. and SOFTWARE PATENT CO. shall attempt in good faith to agree upon their respective rights to the Escrow Items. If BUSINESS METHOD PATENT CO. and SOFTWARE PATENT CO. do so agree, a memorandum setting forth such agreement shall be prepared and signed by both BUSINESS METHOD PATENT CO. and SOFTWARE PATENT CO. and delivered to the Escrow Agent. The Escrow Agent shall be entitled to rely on any such memorandum and distribute the Escrow Items in accordance with the terms thereof. If no such agreement can be reached after good faith negotiation, either BUSINESS METHOD PATENT CO. or SOFTWARE PATENT CO. may demand arbitration of the matter; in such event, the American Arbitration Association shall be asked to appoint one (1) arbitrator, familiar with the software industry in the United States, to rule on the matter, such appointment to be in accordance with the then current Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator shall be binding and conclusive upon BUSINESS METHOD PATENT CO. and SOFTWARE PATENT CO., and the Escrow Agent shall be entitled to act in accordance with such decision. Any such arbitration shall be held in \_\_\_\_\_\_\_\_\_\_\_\_\_\_(City), \_\_\_\_\_\_\_\_\_\_\_\_(State). The prevailing party in any such arbitration shall be entitled to receive payments of its attorneys’ fees and costs.

 4.4 Upon receipt of a certificate signed by an officer of BUSINESS METHOD PATENT CO. and SOFTWARE PATENT CO. stating that the escrow provided for herein has been terminated, the Escrow Agent shall deliver the Escrow Items in accordance with the instructions contained in such certificate.

 4.5 The Escrow Agent’s duties hereunder may be altered, amended, modified or revoked only by a writing signed by officers of BUSINESS METHOD PATENT CO. and SOFTWARE PATENT CO.

 4.6 The Escrow Agent shall be obligated only for the performance of such duties as are specifically set forth herein and may rely and shall be protected in relying upon any instrument reasonably believed by the Escrow Agent to be genuine and to have been signed or presented by the proper party or parties. The Escrow Agent shall not be personally liable for any act the Escrow Agent may do or omit to do hereunder while acting in good faith and in the exercise of its own good judgment.

 4.7 The Escrow Agent is hereby expressly authorized to comply with and obey orders, judgments or decrees of any court and of the arbitrator provided for in Section 4.3 above. In case the Escrow Agent obeys or complies with any such order, judgment or decree, the Escrow Agent shall not be liable to any of the parties hereto or to any other person, firm or corporation by reason of such compliance, notwithstanding any such order, judgment or decree being subsequently reversed, modified, annulled, set aside, vacated or found to have been entered without jurisdiction.

 4.8 The Escrow Agent shall be entitled to employ such legal counsel and other experts as the Escrow Agent may deem properly necessary to advise it in connection with its obligations hereunder, may rely upon the advice of such counsel, and may pay such counsel reasonable compensation therefor.

 4.9 The responsibilities of the Escrow Agent hereunder shall terminate if the Escrow Agent shall resign by written notice to BUSINESS METHOD PATENT CO. and SOFTWARE PATENT CO.. In the event of any such termination, SOFTWARE PATENT CO. shall promptly appoint a successor Escrow Agent, subject to the approval of BUSINESS METHOD PATENT CO., which approval will not be unreasonably withheld.

 4.10 It is understood and agreed that should any dispute arise with respect to the delivery and/or ownership or right of possession of any part of the Escrow Items held by the Escrow Agent hereunder, the Escrow Agent is authorized and directed to retain the Escrow Items in its possession without liability to anyone until such dispute shall have been settled either by mutual written agreement as provided above or by final order, decree, or judgment of the arbitrator provided for in Section 4.3 above or of a court of competent jurisdiction after the time for appeal has expired and no appeal has been perfected, but the Escrow Agent shall be under no duty whatsoever to institute or defend any such proceedings.

5. Notices.

 Notices required or permitted to be given under this Agreement shall be in writing, and sent by prepaid registered or certified mail, return receipt requested, to the addresses on the signature page hereto. All such notices, if properly addressed, shall be effective when received.

6. Non-assignment.

 Neither party shall assign this Agreement or any rights or obligations under it except in accordance with the Purchase Agreement.

7. General.

 7.1 This Agreement and the Purchase Agreement are the complete understanding between the parties on this subject matter and they supersede all prior discussions or agreements on this subject between them. It may not be modified except by a writing signed by authorized representatives of both parties. If either party fails to enforce any term, such failure shall not prevent enforcement on any other occasion.

 7.2 This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and assigns.

 7.3 All rights and remedies of the parties whether conferred by this or by any other instrument or by law, shall be cumulative and may be exercised singularly or concurrently. If any provision of this Agreement is held invalid by any law or regulation of any government or by the final determination of any court of competent jurisdiction, such invalidity shall not affect the enforceability of any other provisions not held invalid. This Agreement and the rights and obligations of the parties to it shall be governed by the local laws of the State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

IN WITNESS WHEREOF, the parties have caused this instrument to be duly executed as of the date last set forth below.

BUSINESS METHOD PATENT CO. SOFTWARE PATENT CO.

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Duly Authorized) (Duly Authorized)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
(Typed Name) (Typed Name)

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Address:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

ESCROW AGENT

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Duly Authorized)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Typed Name)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date

Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Exhibit A

Programs Subject to Escrow