

SOURCE CODE ESCROW AGREEMENT

THIS ESCROW AGREEMENT (the “Escrow Agreement”), dated as of _____, 20____ by and among _____ (the “Licensor”) and _____ (the “Licensee”), and The Bryn Mawr Trust Company, a Pennsylvania banking corporation, as escrow agent (the “Escrow Agent”).

WHEREAS, Licensor has entered into a certain Standard License Agreement, signed by the parties on _____, whereby Licensor licenses certain computer software to Licensee (the “Standard Licensor Agreement”);

WHEREAS, it is the policy of Licensor not to disclose the source code of the Software listed on Attachment A to this Agreement or the current version of the software (the “Source Code”) except as provided for herein;

WHEREAS, Licensor agrees that upon certain events Licensee shall have the right to obtain the Source Code;

WHEREAS, Licensor agrees to deliver the Source Code to the Escrow Agent and under certain circumstances the Licensee shall have the right to obtain the Source Code;

NOW, THEREFORE, in consideration of the agreements herein contained, the Licensor, the Licensee and the Escrow Agent agree as follows:

1. DEPOSIT OF SOURCE CODE

Within thirty (30) days of the date of the Agreement, Licensor agrees to deliver, and the Escrow Agent agrees to accept from Licensor, the Source Code and quarterly (four times per year, no less than once in any three months), updated, corrected revisions of the Source Code. Licensor will provide the Escrow Agent and Licensee an inventory listing of the Source Code upon delivery of such items to the Escrow Agent. The Escrow Agent will acknowledge receipt of the Source Code and the inventory listing. The Source Code held by the Escrow Agent shall remain the exclusive property of Licensor, and the Escrow Agent shall not use the Source Code or disclose the same to any third party, except as specifically provided for herein. The Escrow Agent will hold the Source Code in safekeeping unless and until it is authorized to release the Source Code pursuant to section 2 or section 4 hereof.

2. RELEASE OF SOURCE CODE

The Escrow Agent agrees that it will hold and dispose of the Source Code on the following terms and conditions:

- 2.1 Licensee may, by written notice to the Escrow Agent in the form attached hereto as Exhibit A (a "Claim Notice"), assert that it is entitled to receive a copy of the Source Code because one of the following events shall have occurred: (a) Licensor shall have ceased business; (b) Licensor no longer offers support and maintenance for the Source Code except where Source Code is not supported due to a third party terminating support of their product upon which the source code relies (i.e. DOS, Microsoft Windows, web platforms); or (c) Licensor has become the subject of any bankruptcy or insolvency proceeding which has not been dismissed or stayed within 90 days of the commencement of such proceeding. The Claim Notice shall specify which of the foregoing events Licensee asserts has occurred to entitle Licensee to receive the Source Code.
- 2.2 No later than three (3) business days after receipt by the Escrow Agent of a Claim Notice, the Escrow Agent shall give notice thereof and deliver a copy of such Claim Notice to Licensor by certified mail return receipt requested, addressed to Licensor at the address set forth in section 8.3 hereof, or such changed address as Licensor may specify pursuant to the provisions of this Escrow Agreement. Licensor shall have ten (10) days after the date of mailing of the notice of a Claim Notice to give notice to Escrow Agent that Licensor disputes the accuracy of the Claim Notice. In the event Licensor does not give notice within said ten (10) day period to the Escrow Agent that it disputes the accuracy of the Claim Notice, the Escrow Agent shall promptly deliver the Source Code then held by it to the Licensee. However, in the event the Escrow Agent does receive notice from Licensor within said ten (10) day time period that it does dispute the accuracy of the Claim Notice, the Escrow Agent shall immediately notify Licensee of such fact and shall continue to hold the Source Code in escrow (a) until receipt of a joint written direction from Licensor and Licensee as to the disposition of the Source Code, or (b) until there is a final decision by a court having jurisdiction over the parties with respect to the claim or claims set forth in the Claim Notice, in which case the Escrow Agent shall dispose of the Source Code in accordance with such joint direction or final decision.
- 2.3 The Escrow Agent shall deliver the Source Code to Licensee, or as applicable, Licensor, at any time upon the joint written instructions of Licensor and Licensee.
- 2.4 Upon the delivery by the Escrow Agent of the Source Code to Licensor or the Licensee in accordance herewith, the Escrow Agent shall be discharged of all responsibility for any further action hereunder and the obligations of the Escrow Agent created hereby shall terminate.

3. PAYMENT TO ESCROW AGENT; INDEMNIFICATION

- 3.1 The Licensor and Licensee, jointly and severally, agree to pay the Escrow Agent its compensation for its services as Escrow Agent hereunder, and to reimburse the Escrow Agent for all costs, fees and expenses incurred by the Escrow Agent in the performance of its duties hereunder, including the reasonable costs, fees and expenses of the Escrow

Agent's counsel all as set forth in the fee schedule attached as Exhibit B hereto. In the event that the fees and expenses of the Escrow Agent are not paid in full within 30 days of the billing date by Licensor or Licensee or within 30 days of receipt by Licensor and Licensee of notice from Escrow Agent that such fees and expenses have not timely been paid, the Escrow Agent may terminate this Escrow Agreement as provided in section 4.

3.2 The Licensor and Licensee, jointly and severally, will reimburse and indemnify the Escrow Agent for, and hold it harmless against, any loss, liability, claim, cost, damage or expense, including but not limited to the fees and expenses of Escrow Agent's counsel, incurred without gross negligence or willful misconduct on the part of the Escrow Agent arising out of or in conjunction with its acceptance of this Escrow Agreement, the acceptance of the Source Code, or the performance of its duties and obligations under this Escrow Agreement, as well as the costs and expenses of defending against any claim or liability arising out of or relating to this Escrow Agreement.

3.3 The terms and obligations of this Section 3 shall survive the termination of this Agreement, the payment of any amounts hereunder, the distribution of all property hereunder and the resignation or removal of the Escrow Agent.

4. TERMINATION

This Escrow Agreement shall terminate on the delivery of the Source Code to Licensee in accordance with section 2 hereof. In addition, the Escrow Agent (i) may terminate this Escrow Agreement by 30 days written notice to Licensor and Licensee, and (ii) upon the effective date of any such termination shall deliver the Source Code to a successor Escrow Agent designated by Licensee. If such termination is the result of failure of the Licensor and Licensee to pay the fees and expenses of the Escrow Agent, the Escrow Agent may destroy or dispose of the Source Code in any manner determined by the Escrow Agent. Fees previously paid are non-refundable.

5. WAIVER, AMENDMENT OR MODIFICATION; SEVERABILITY

This Escrow Agreement shall not be waived, amended or modified except by the written agreement of the Escrow Agent, Licensor and Licensee. Any invalidity, in whole or in part, of any provision of this Escrow Agreement shall not affect the validity or any other of its provisions.

6. THE ESCROW AGENT

Acceptance by the Escrow Agent of its duties under this Escrow Agreement is subject to the following terms and conditions, which all parties to this Escrow Agreement hereby agree shall govern and control the rights and duties of the Escrow Agent.

6.1 The Escrow Agent shall not be obligated or required to examine or inspect the Source Code. The Escrow Agent's obligation for safekeeping shall be limited to providing the same degree of care for the Source Code as it maintains for its valuable documents and those of its customers lodged in the same location. However, Licensor and Licensee agree and acknowledge that the Escrow Agent shall not be responsible for any loss or damage to the Source Code due to changes in atmospheric conditions (including, but not limited to, failure of the air condition system), unless such changes are proximately caused by the gross negligence or willful misconduct of the Escrow Agent.

6.2 The duties and obligations of the Escrow Agent shall be determined solely by the express provisions of this Escrow Agreement and the Escrow Agent shall not be liable except for the performance of such duties and obligations as are specifically set out in this Escrow Agreement and no duties, obligations or responsibilities shall be inferred or implied against the Escrow Agent and any permissive rights of the Escrow Agent hereunder shall not be construed as duties. The Escrow Agent shall not be required to inquire as to the performance or observation of any obligation, term or condition under any agreement or arrangement by the Licensor or Licensee. The Escrow Agent is not a party to, and is not bound by, any agreement or other document out of which this Escrow Agreement may arise, including, but not limited to, the [Standard Licensor Agreement, any amendment to the Standard Licensor Agreement or any assignment of the Standard Licensor Agreement]. The Escrow Agent shall be under no liability to any party hereto by reason of any failure on the part of any party hereto or any maker, guarantor, endorser or other signatory of any document or any other person to perform such person's obligations under any such document. The Escrow Agent shall not be bound by any waiver, modification, termination or rescission of this Escrow Agreement or any of the terms hereof, unless evidenced by a writing delivered to the Escrow Agent signed by the proper party or parties and, if the duties or rights of the Escrow Agent are affected, unless it shall give its prior written consent thereto. This Escrow Agreement shall not be deemed to create a fiduciary relationship between the parties hereto under state or federal law.

6.3 The Escrow Agent shall not be responsible in any manner for the validity or sufficiency of this Escrow Agreement or of any property delivered hereunder, or for the value or collectibility of any note, check or other instrument, if any, so delivered, or for any representations made or obligations assumed by any party other than the Escrow Agent. Nothing herein contained shall be deemed to obligate the Escrow Agent to deliver any cash, instruments, documents or any other property referred to herein, unless the same shall have first been received by the Escrow Agent pursuant to this Escrow Agreement.

6.4 The Escrow Agent may request that the Licensor and Licensee deliver a certificate setting forth the names of individuals and or titles of officers authorized at such time to take specific actions pursuant to this Escrow Agreement and shall be entitled to rely upon such certificate until a new certificate is delivered to Escrow Agent. The Escrow Agent may rely upon and shall not be liable for acting or refraining from acting upon any written notice, instruction or request furnished to it hereunder and believed by it to be genuine

and to have been signed or presented by the proper party or parties. The Escrow Agent shall be under no duty to inquire or investigate the validity, accuracy or content of any such document.

6.5 The Escrow Agent shall not be liable for any error of judgment, or for any act done or step taken or omitted by it in good faith or for any mistake in act or law, or for anything which it may do or refrain from doing in connection herewith, except its own gross negligence or willful misconduct.

6.6 The Escrow Agent may seek the advice of legal counsel (at the joint and several expense of the Licensor and Licensee) in the event of any dispute or question as to the construction of any of the provisions of this Escrow Agreement or its duties hereunder, and it shall incur no liability and shall be fully protected in respect of any action taken, omitted or suffered by it in good faith in accordance with the advice or opinion of such counsel.

6.7 The parties hereto agree that should any dispute arise with respect to the payment, ownership or right of possession of the Source Code, or if the Escrow Agent is uncertain as to its rights or duties hereunder, the Escrow Agent is authorized and directed to retain in its possession, without liability to anyone, except for its willful misconduct or gross negligence, the Source Code until such dispute or uncertainty shall have been settled either by mutual agreement by the parties concerned or by the final order, decree or judgment of a court or other tribunal of competent jurisdiction in the United States of America, and a notice executed by the parties to the dispute or their authorized representatives shall have been delivered to the Escrow Agent setting forth the resolution of the dispute. The Escrow Agent shall be under no duty whatsoever to institute, defend or partake in such proceedings; provided however, the Escrow Agent may, in its sole discretion, commence an interpleader action or seek other judicial relief or orders as it may deem, in its sole discretion, necessary. The costs and expenses, including fees and expenses of Escrow Agent's counsel, incurred in connection with any such proceeding shall be paid by, and shall be deemed a joint and several expense of the Licensor and Licensee.

6.8 The Escrow Agent shall never be required to use or advance its own funds or otherwise incur financial liability in the performance of any of its duties or the exercise of any of its rights and powers hereunder. The Escrow Agent shall not be obligated to take any action which in its reasonable judgment would involve it in expense or liability unless it has been furnished with an indemnity or other security reasonably satisfactory to it.

6.9 In no event shall the Escrow Agent be liable, directly or indirectly, for any special, indirect or consequential damages, even if the Escrow Agent has been advised of the possibility of such damages and regardless of the form of action.

6.10 The Escrow Agent shall not be responsible for delays or failures in performance

resulting from acts beyond its control. Such acts shall include but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, communication line failures, computer viruses, power failures, earthquakes, terrorist attacks or other disasters.

6.11 The Escrow Agent is authorized to obey and comply, in any manner it or its counsel deems appropriate, with all writs, order, judgments, awards, decrees issued or process entered by any court or arbitral tribunal with respect to this Escrow Agreement and if the Escrow Agent so complies, it shall not be liable to any party hereto or to any other party or person notwithstanding that any such writ, order, judgment, award, decree or process may be subsequently reversed, modified, annulled, set aside, vacated or found to have been entered without competent jurisdiction.

6.12 The agreements set forth in this Section 6 shall survive the resignation or removal of the Escrow Agent, the termination of this Escrow Agreement and the payment of any amounts hereunder and the distribution of all property hereunder.

7. RESIGNATION

The Escrow Agent shall have the right to resign upon thirty (30) days written notice to the Licensor and Licensee. In the event of such resignation, the Licensor and Licensee shall appoint a successor escrow agent hereunder by delivering to the Escrow Agent a written notice of such appointment. Upon receipt of such notice, the Escrow Agent shall deliver to the designated successor escrow agent all property held hereunder and shall thereupon be released and discharged from any and all further responsibilities whatsoever under this Escrow Agreement; provided, however, that the Escrow Agent shall not be deprived of its compensation earned prior to such time. If no successor escrow agent shall have been designated by the date specified in the Escrow Agent's notice, all obligations of the Escrow Agent hereunder shall nevertheless cease and terminate. Its sole responsibility thereafter shall be to keep safely all property then held by it and to deliver the same to a person designated by the other parties hereto or in accordance with the direction of a final order or judgment of a court of competent jurisdiction. Additionally, if no successor escrow agent shall have been timely designated, the Escrow Agent may (i) at the joint and several expense of the Licensor and Licensee, petition any court of competent jurisdiction for the appointment of a successor escrow agent or (ii) deposit the Escrow Funds with a court of competent jurisdiction and thereafter have no further responsibilities or duties in connection therewith.

8. MISCELLANEOUS

8.1 This Escrow Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings (written or oral) of the parties in connection herewith.

directions given by unsecured facsimile or email transmission, provided, however, that such losses have not arisen from the gross negligence or willful misconduct of the Escrow Agent, it being understood that the failure of the Escrow Agent to verify or confirm that the person providing the instructions or directions, is, in fact, an authorized person does not constitute gross negligence or willful misconduct.

8.4 This Escrow Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania without reference to or application of its rules or principles of conflicts of law. Each of the parties hereto hereby irrevocably agrees that any action, suit or proceedings against any of them by any of the other aforementioned parties with respect to this Agreement shall be brought before the exclusive jurisdiction of the federal or state courts located in [], unless all the parties hereto agree in writing to any other jurisdiction. Each of the parties hereto hereby submits to such exclusive jurisdiction. Each party consents to service of process by certified or registered mail, return receipt requested, directed to the address last specified for notices. All parties hereto agree to waive the right to trial by jury to the fullest extent permitted by law. To the extent that in any jurisdiction, the Licensor or Licensee may be entitled to claim, for itself or its assets, immunity from suit, execution, attachment (whether before or after judgment) or other legal process, each hereby irrevocably agrees not to claim, and hereby waives such immunity.

8.5 This Escrow Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, executors, successors, and assigns. Notwithstanding any other provision contained herein, if the Escrow Agent consolidates with, merges or converts into, or transfers all or substantially all of its corporate trust business to, another corporation, the successor corporation without any further act shall be the successor Escrow Agent hereunder. If the Licensee or Licensor assigns its rights under this Agreement to any third party, it will immediately notify the Escrow Agent in writing of such assignment.

8.6 The failure of any party at any time or times to require performance of any provision hereunder shall in no way affect the right of such party at a later time to enforce the same. The rights and remedies conferred upon the parties hereto shall be cumulative, and the exercise or waiver of any such right or remedy shall not preclude or inhibit the exercise of any additional rights or remedies. The waiver of any right or remedy hereunder shall not preclude the subsequent exercise of such right or remedy.

8.7 This Escrow Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

8.8 Nothing in this Escrow Agreement shall confer any rights, either express or implied, upon any person or entity, other than the parties hereto and their respective successors, permitted assigns, heirs, executors, personal representatives, administrators, and legal representatives.

8.8 If any provisions of this Escrow Agreement shall be declared by any court of competent jurisdiction illegal, void or unenforceable, the other provisions shall not be affected, but shall remain in full force and effect.

8.9 The headings of the sections contained in this Escrow Agreement are solely for convenience or reference and shall not affect the meaning or interpretation of this Escrow Agreement.

8.10 The Licensor and Licensee each (as to themselves) represent and warrant (a) that this Escrow Agreement has been duly authorized, executed and delivered on its behalf and constitutes its legal, valid and binding obligation and (b) that the execution, delivery and performance of this Escrow Agreement by the Licensor or Licensee, as applicable, do not and will not violate any applicable law or regulation.

8.11 The parties hereto acknowledge that, in accordance with Section 326 of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (as amended, modified or supplemented from time to time, the "USA Patriot Act"), the Escrow Agent, like all financial institutions, is required to obtain, verify, and record information that identifies each person or legal entity that opens an account. The parties to this Escrow Agreement agree that they will provide the Escrow Agent with such information as the Escrow Agent may request in order for the Escrow Agent to satisfy the requirements of the USA Patriot Act.

8.12 The Licensor and Licensee shall furnish the Escrow Agent, upon execution of this Escrow Agreement, and as subsequently required, all appropriate U.S. tax forms and information in order for the Escrow Agent to comply with U.S. tax regulations.

[Signatures on Next Page]

IN WITNESS WHEREOF, the parties have caused this Escrow Agreement to be executed by their fully authorized representatives as of the day and year first above written.

[LICENSOR]

By _____

[LICENSEE]

By _____

**THE BRYN MAWR TRUST
COMPANY, as Escrow Agent**

By _____

[ATTACHMENT A]

[Software list to be included if necessary]

EXHIBIT A

[Date]

The Bryn Mawr Trust Company
10 Bryn Mawr Avenue
Bryn Mawr, PA 19010
Attn: Trust/Escrow Administration

Re: Claim Notice

Dear Sirs:

In accordance with the terms of Section 2.1 of that certain Escrow Agreement dated as of [] (the “Escrow Agreement”) by and among [] (the “Licensor”), [] (the “Licensee”) and The Bryn Mawr Trust Company, as escrow agent (the “Escrow Agent”), the Licensee hereby claims that it is entitled to the Source Code. The Licensee bases its claim upon [*insert which 2.1 event occurred*]. Capitalized terms used herein and not defined shall have the respective meanings ascribed to them in the Escrow Agreement

[LICENSEE]

By: _____
Name:
Title:

EXHIBIT B

[Escrow Agent Fee Schedule to be attached]