

State of Texas
Department of Information Resources



MSA Attachment C

Form of Source Code Escrow

Texas.gov Payment Services
DIR-ESS-TGOV-PMNT-254

FORM OF SOURCE CODE ESCROW

This Source Code Escrow Agreement (this “**Escrow Agreement**”) is entered into on _____, 20__ (the “**Effective Date**”), by and among _____, a _____ organized and existing under the laws of the State of _____ (“**Escrow Agent**”), _____, a _____ organized and existing under the laws of the State of _____ (“**Depositor**”) and The State of Texas, acting by and through the Texas Department of Information Resources (“**Registrant**”). Escrow Agent, Depositor and Registrant are each referred to herein individually as “party” and collectively as “the parties.”

A. Depositor and Registrant have entered into that certain Texas.gov Payment Services Master Services Agreement No. DIR-ESS-TGOV-PMNT-254 dated as of March 14, 2018, as amended, supplemented or otherwise modified from time to time (for purposes of this Escrow Agreement, the “**MSA**”), pursuant to which Depositor licensed to Registrant certain Successful Respondent Owned Materials and Third Party Materials consisting of Software (as such terms are defined in the MSA) and agreed to provide to Registrant support and maintenance Services for such Software.

B. Depositor has agreed to place in escrow with Escrow Agent the Source Code (as hereinafter defined) for such Successful Respondent Owned Materials and Third Party Materials, as required by the MSA.

C. Such Materials (as such term is defined in the MSA) are critical to Registrant and the DIR Customers (as such term is defined in the MSA) in the conduct of their operations.

D. Depositor and Registrant desire to establish an escrow with Escrow Agent to ensure the availability to Registrant of such Materials and all necessary proprietary information related to such Materials in the event certain Release Conditions (as hereinafter defined) should occur.

E. The parties desire this Escrow Agreement to be supplementary to the MSA pursuant to 11 United States Code, Section 365(n), as amended.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows.

1. DEFINITIONS. When used herein with initial capital letters, the following terms shall have the following meanings:

a. “Ancillary Agreement” means the MSA and any other agreements between or among the parties and/or their Affiliates that are entered into in connection therewith.

b. “Deposit Materials” means the Source Code for: (i) the Successful Respondent Owned Materials that constitute Software, and (ii) to the extent available pursuant to Depositor’s then-current license, the Third Party Materials that constitute Software, in each case if and to the extent Registrant has requested that Depositor deposit the Source Code for such Software in escrow pursuant to applicable provisions of the MSA.

c. “MSA” shall have the meaning given such term in the preamble of this Escrow Agreement.

d. “Release Condition” shall have the meaning given such term in Section 5(a) below.

e. “Source Code” means, with respect to any Software, the full source language, human-readable statement of such Software and complete source materials, user documentation and program maintenance documentation for such Software, including all available flow charts, schematics and annotations which comprise the precoding detailed design specifications for such Software, together with all configurations, settings, compiler switches, library routines and files, data files, templates and the like necessary or desirable for creating the executable code form of such Software, all in a form suitable for reproduction by computer and photocopy equipment, and all Software necessary to convert such source code into the executable code form of such Software.

f. “Verification” means a procedure or process to determine the accuracy, completeness, sufficiency and quality of the Deposit Materials at a level of detail reasonably requested by Registrant. Verification may include, as required by Registrant (or by a third party on behalf of Registrant), file listing, compilation, size comparison, function comparison and on-line comparison services.

Terms that are used herein with initial capital letters but are not defined herein shall have the meanings given such terms in the MSA. Without limiting the generality of the foregoing, the following terms shall have the meanings given to them in the MSA: “**Control**”, “**DIR Customers**”, “**Materials**”, “**Successful Respondent Materials**”, “**Software**” and “**Third Party Materials.**”

2. DELIVERY.

a. Obligation to Deliver Deposit Materials. Within ten (10) business days after Registrant has requested pursuant to the MSA that Depositor deposit any Deposit Materials in escrow, and thereafter from time to time as required hereunder, Depositor shall deliver to Escrow Agent a parcel (the “**Parcel**”) sealed by Depositor, which Depositor warrants contains two (2) complete sets of such Deposit Materials. Depositor shall deliver updated Deposit Materials to Escrow Agent in accordance with **Section 2(g)** below.

b. Identification of Tangible Media. Prior to each delivery of the Deposit Materials to Escrow Agent, Depositor shall (i) conspicuously label for identification each document, magnetic tape, disk or other tangible media upon which the Deposit Materials are written or stored and (ii) properly complete and sign a copy of the attached Source Code Escrow Attachment A (a “**SCE Attachment**”) to list such tangible media by the item label description, the type of media and the quantity provided. Each SCE Attachment must be properly completed, signed and delivered by Depositor to Escrow Agent together with each deposit of the Deposit Materials. Each SCE Attachment that is executed by Depositor shall be deemed a part of this Escrow Agreement and is incorporated herein by this reference.

c. Deposit Inspection. When Escrow Agent receives a Parcel and any supplements to or update of the Deposit Materials, Escrow Agent shall promptly conduct a deposit inspection by opening the Parcel and visually matching the labeling of the tangible media containing the Deposit Materials to the item descriptions and quantity listed on the applicable SCE Attachment. Escrow Agent shall complete each such inspection no more than five (5) business days after receiving a Parcel. In addition to such inspection, upon Registrant’s request, Escrow Agent shall promptly conduct a Verification of the Deposit Materials in accordance with Registrant’s requirements and Section 2(e) below. In the event Escrow Agent determines that the labeling of the tangible media comprising a Parcel matches the information listed on the applicable SCE Attachment, Escrow Agent shall sign the SCE Attachment and mail a copy thereof to Depositor and Registrant. Alternatively, in the event Escrow Agent determines that the labeling of the tangible media comprising a Parcel does not match the information listed on the applicable SCE Attachment, Escrow Agent shall immediately (i) note the discrepancies in writing on the SCE Attachment, (ii) sign the SCE Attachment with the exceptions noted and (iii) immediately provide a copy of such SCE Attachment to Depositor and

Registrant. Within five (5) days after receiving from Escrow Agent written notice of such discrepancies, Depositor shall remedy such discrepancies and re-deliver to Escrow Agent the applicable Parcel. Escrow Agent's acceptance of each Parcel shall be deemed effective upon the earlier of the signing on behalf of Escrow Agent of the applicable SCE Attachment or the expiration of the five-day period commencing with Escrow Agent's receipt of the applicable Parcel.

d. Depositor's Warranties and Representations. Depositor represents, warrants and covenants, as appropriate, as follows:

- (1) Depositor lawfully possesses all of the Deposit Materials deposited with Escrow Agent;
- (2) with respect to all of the Deposit Materials, Depositor has the right and authority to grant to Escrow Agent and Registrant the rights and licenses as provided in this Escrow Agreement and the MSA;
- (3) the Deposit Materials are not subject to any lien or other encumbrance;
- (4) the Deposit Materials consist of the proprietary information and other Materials identified in the MSA and comply in all respects to, and are covered by Depositor's representations, warranties, covenants and indemnities contained in, the MSA, as applicable pursuant to the MSA;
- (5) there are no known intended or unintended copy inhibitors or limiters, locking mechanisms, lockout encryption or security devices or Malicious Code contained in or related to the Deposit Materials that may prevent Registrant or a third party from using, copying and modifying the Deposit Materials; and
- (6) the Deposit Materials delivered to Escrow Agent shall at all times (i) conform to the version(s) of the Successful Respondent Owned Materials and, as applicable, the Third Party Materials then in use in connection with the Services, (ii) be a complete and correct set of the Source Code version of the Successful Respondent Owned Materials and, as applicable, the Third Party Materials and (iii) be sufficient to enable a reasonably skilled computer programmer of Registrant to maintain and support the Successful Respondent Owned Materials and, as applicable, the Third Party Materials without further assistance from Depositor or reference to any other Software or Materials.

e. Verification. Registrant (or a third party on behalf of Registrant) reserves the right from time to time and at any time to cause Verification of the Deposit Materials and to examine the Deposit Materials to verify conformance to the requirements of the MSA and this Escrow Agreement. Except as otherwise required by Registrant (or by a third party on behalf of Registrant and reasonably approved by Depositor), all Verification tasks shall be performed solely by employees of Escrow Agent and, at Registrant's option, of Registrant or a third party engaged by Registrant (subject to by Depositor's reasonable approval of Registrant), without interference from Depositor; provided, however, that if and to the extent requested by Registrant (or by a third party on behalf of Registrant), Depositor shall at Depositor's expense provide to Escrow Agent and/or Registrant all reasonably necessary assistance and cooperation in connection with the performance of any Verification, including, without limitation, assisting in the performance of tests and inspections ancillary to such Verification and compiling the Source Code into the executable code version of the Successful Respondent Owned Materials and, as applicable, the Third Party Materials. Any Verification performed by Escrow Agent or a third party engaged by Escrow Agent (and acceptable to Registrant) shall be performed in a good, workmanlike, timely and professional manner by qualified

persons fully familiar with the requirements, Materials and technology involved in performing such Verifications.

f. Degeneration Prevention. The parties agree that since the Deposit Materials are susceptible to loss of quality either resulting from improper storage or the passage of time:

- (1) Escrow Agent represents and warrants that it shall store the Deposit Materials in a fire-proof, weatherproof, demagnetization-proof and environmentally controlled locked receptacle, under climatic conditions sufficient to safeguard the quality and integrity of the Deposit Materials, and in the event the Deposit Materials have not been updated within twelve (12) months subsequent to Depositor's most recent deposit, Escrow Agent shall promptly notify Depositor and Registrant in writing of the foregoing fact.
- (2) Within ten (10) business days after such notification is sent to Depositor, Depositor shall provide Escrow Agent with the latest and then-current version of the Deposit Materials. After the expiration of such ten (10) Business Day period, Escrow Agent shall notify Registrant that either (i) Escrow Agent has received from Depositor an update to the Deposit Materials and Escrow Agent shall identify the contents of such update or (ii) Escrow Agent has not received from Depositor any response to Escrow Agent's notice.

g. Deposit Updates. In addition to deliveries of the Deposit Materials pursuant to Section 2(f), Depositor shall deliver to Escrow Agent updates to the Deposit Materials as described in this Subsection. Such updates shall consist of the Source Code version of each Upgrade of the Successful Respondent Owned Materials and, as applicable, the Third Party Materials and Upgrades to any other components of the Deposit Materials. Depositor shall deliver such updates within thirty (30) days after the calendar quarter in which Depositor develops or obtains such Upgrades. Such Upgrades shall be added to or replace the existing Deposit Materials as appropriate in accordance with Depositor's instructions contained in the applicable SCE Attachment; provided, however, that Escrow Agent shall not remove, destroy or replace any Deposit Materials without Registrant's prior written consent. All Upgrades to Deposit Material shall be listed on a new SCE Attachment, and such new SCE Attachment shall be signed by Depositor. Escrow Agent shall ensure that each SCE Attachment shall be held and maintained separately within Registrant's account. Escrow Agent shall create an independent record to document all activity occurring in connection with Registrant's account and each SCE Attachment. All references in this Escrow Agreement to the Deposit Materials shall be read and understood to mean and include the initial Deposit Materials and any Upgrades thereto.

h. Removal of Deposit Materials. The Deposit Materials may be removed or exchanged solely (i) upon the joint written consent of both Depositor and Registrant or (ii) as otherwise provided in this Escrow Agreement.

i. Retained Rights. Depositor hereby acknowledges and agrees that in the event of bankruptcy, if Depositor as a debtor-in-possession, or a trustee or other guardian for Depositor's creditors (either, a "Trustee"), rejects this Escrow Agreement, the MSA or any agreement supplementary thereto (collectively, for purposes of this Section, "**this Agreement**"), Registrant (or a third party on behalf of Registrant) may elect to retain its rights hereunder as provided in Section 365(n) of the Bankruptcy Code. Notwithstanding any prior delivery of Deposit Materials under this Agreement or any right thereto, Registrant (or a third party on behalf of Registrant) shall have the right to (i) obtain from Depositor and/or its Trustee and (ii) use a copy of the Deposit Materials and all other Software to which Registrant has a right or license under this Agreement as of the first time Depositor becomes the subject of an action in bankruptcy, insolvency, liquidation or reorganization (or the equivalent) or has appointed for it a Trustee. Depositor shall not interfere with the rights of Registrant as provided in this Agreement to obtain Deposit Materials from the

Trustee. Depositor or the Trustee shall, if requested by Registrant (or by a third party on behalf of Registrant) prior to any permitted rejection by the Trustee of this Agreement, or following such rejection if Registrant (or a third party on behalf of Registrant) elects to retain its rights under this Agreement pursuant to said Section 365(n), promptly make a complete copy of the Deposit Materials on appropriate magnetic or optical media available to Registrant or, at Registrant's request (or at a third party's request on behalf of Registrant) and reasonable expense, cause such a copy of the Deposit Materials to be delivered to Registrant.

3. CONFIDENTIALITY AND RECORD KEEPING.

a. Confidentiality. The Deposit Materials shall only be accessible to authorized employees of Escrow Agent. Escrow Agent shall reasonably protect the confidentiality of the Deposit Materials. Except as provided in this Escrow Agreement, Escrow Agent shall not disclose, transfer, make available or use the Deposit Materials. If Escrow Agent receives a subpoena or other order of a court or other judicial tribunal pertaining to the disclosure or release of the Deposit Materials, Escrow Agent will immediately notify Depositor and Registrant. It shall be the responsibility of either Depositor or Registrant to challenge any such order; provided, however, that Escrow Agent does not waive its rights to present its position with respect to any such order. Escrow Agent will not be required to disobey any court or other judicial tribunal order.

b. Status Reports. At least semi-annually, or as reasonably requested by Depositor or Registrant, Escrow Agent shall issue to Depositor and Registrant a report that describes any activity related to Registrant's account and inventories the Deposit Materials held by Escrow Agent.

c. Audit Rights. Escrow Agent shall retain and make available for audit purposes, upon request by Depositor or Registrant (or by a third party on behalf of Registrant), all Depositor- and Registrant-related records and documentation, including invoices, correspondence, contracts and service logs. During the term of this Escrow Agreement and for a two-year period thereafter, Depositor and Registrant (or a third party on behalf of Registrant) shall each have the right to inspect the written records of Escrow Agent pertaining to this Escrow Agreement. Any inspection shall be held during normal business hours and following at least three (3) Business Days' prior notice. The party requesting such audit shall bear the cost of conducting the same; provided, however, that in the event such audit uncovers inaccuracies in such records, Escrow Agent shall reimburse such party for such costs and provide a credit to Registrant of all fees paid to Escrow Agent hereunder attributable to such inaccuracies.

4. GRANT OF RIGHTS TO ESCROW AGENT. Depositor hereby grants Escrow Agent the right to transfer all media and tangible embodiments that comprise the Deposit Materials in accordance with this Escrow Agreement. However, except for the rights and licenses granted hereunder, such transfer does not include the ownership or transfer of the intellectual property rights in such Deposit Materials. Escrow Agent shall have the right to make copies of the Deposit Materials as necessary to perform under this Escrow Agreement. Escrow Agent shall not remove any titles, proprietary rights notices or similar legends contained on the Deposit Materials. As of the Effective Date of this Escrow Agreement, Depositor hereby grants to Escrow Agent a world-wide, non-exclusive, irrevocable, royalty-free right and license to sublicense the Deposit Materials to Registrant and DIR Customers in accordance with the terms of this Escrow Agreement but only as needed to perform its obligations hereunder. Except as provided herein, Escrow Agent shall not sublicense or otherwise transfer its rights to the Deposit Materials.

5. RELEASE OF DEPOSIT.

a. **Release Conditions.** For all purposes under this Escrow Agreement, “**Release Condition**” means the occurrence of any of the following:

- (i) The sale, assignment, or transfer to any third party of any of Depositor’s rights in the Successful Respondent Owned Materials (or any portion thereof) or as applicable, the Third Party Materials (or any portion thereof), if such sale, assignment, or transfer would prevent Depositor from discharging any of its obligations under any Ancillary Agreement or this Escrow Agreement;
- (ii) Depositor becomes insolvent or commits any affirmative act of insolvency, or generally fails to pay, or admits in writing its inability to pay, debts as they become due, makes a general assignment for the benefit of creditors, files a voluntary petition of bankruptcy, suffers or permits the appointment of a receiver for its business or assets, becomes subject to any proceeding under, or case in, any bankruptcy or insolvency law, or Depositor takes any action to authorize, or in the furtherance of, any of the foregoing;
- (iii) Depositor discontinues providing full support and maintenance Services for the Successful Respondent Owned Materials (or any material portion thereof) or, as applicable, the Third Party Materials in accordance with its obligations pursuant to any Ancillary Agreement;
- (iv) Depositor has ceased to do business or improperly refuses to provide the Services (in the case of Successful Respondent Owned Materials (as defined in the Ancillary Agreement) and for purposes of **Section 14.3 Successful Respondent Owned and Licensed Materials** of the MSA relating to the maintenance of such Materials to Registrant in accordance with the terms of any Ancillary Agreement;
- (v) Depositor has breached (and if subject to a cure period, has not cured such breach within such period) any material term or condition of any Ancillary Agreement or this Escrow Agreement, including, without limitation, Depositor’s obligation to provide Services thereunder.
- (vi) Any change in Control of Depositor (or that portion of Depositor providing all or any material part of the Services under any Ancillary Agreement) or Depositor’s parent company, where such Control is acquired, directly or indirectly, in a single transaction or series of related transactions, or all or substantially all of the assets of Depositor (or that portion of Depositor providing all or any material part of the Services) are acquired by any entity, or Depositor (or that portion of Depositor providing all or any material part of the Services) is merged with or into another entity to form a new entity; or
- (vii) Any other circumstance in which Registrant (or a third party on behalf of Registrant) would be entitled to access or use the applicable Deposit Materials under the express terms of any Ancillary Agreement.

b. **Release of Deposit.** In the event that Registrant (or a third party on behalf of Registrant) provides Escrow Agent with written notice stating that a Release Condition has occurred, Escrow Agent shall follow the following procedures:

- (1) *[Note: Alternative 1—for use with Deposit Material consisting of Successful Respondent Owned Materials: Promptly upon the receipt of such written notice notifying Escrow*

Agent of the occurrence of a Release Condition and confirmation of current Escrow Agent account status, Escrow Agent shall verify such Release Condition with Depositor. If Depositor verifies the Release Condition or fails to respond within five (5) business days, then Escrow Agent shall release to Registrant or its designee the Deposit Material. In the event of a dispute respecting Release Condition pursuant to the proviso of the foregoing sentence, Depositor and Registrant shall submit the dispute to the dispute resolution procedures in **Section 19.1 Informal Dispute Resolution** of the MSA, provided that in the event such process shall not produce a resolution within thirty (30) days of initiation of such process, this issue will be immediately presented to Depositor's General Manager of Public Sector (or equivalent position) and DIR's General Counsel for further efforts at resolution. If after fifteen (15) days following such escalation for further efforts at resolution the dispute is not resolved, the Deposit Material shall be released, provided that such release shall not waive any rights of either party hereunder. *[Note: Alternative 2-- for use with other Deposit Material: Promptly upon the receipt of such written notice notifying Escrow Agent of the occurrence of a Release Condition and confirmation of current Escrow Agent account status, Escrow Agent shall release to Registrant or its designee the Deposit Material.*

- (2) Immediately upon release of the Deposit Material to Registrant or its designee, Escrow Agent shall notify Depositor thereof in writing.
- (3) Notwithstanding the procedures set forth above in clauses (1) and (2) of this Subsection, Escrow Agent shall also release to Registrant the Deposit Materials upon instruction from Depositor.

This Escrow Agreement shall terminate upon the release to Registrant of all of the Deposit Materials held by Escrow Agent, provided that Registrant has accepted the Deposit Materials within thirty (30) days of the date of delivery by Escrow Agent and provided that all fees due to Escrow Agent with respect to this Escrow Agreement have been paid in full. *[** Note: The following sentence to be deleted in the case of escrow of Successful Respondent Owned Materials:]* A dispute regarding the existence of a Release Condition shall not affect Escrow Agent's obligation to release the Deposit Materials pursuant to this Subsection.

c. License. Depositor hereby grants to Registrant and the DIR Customers (and their respective successors and assigns), at no additional charge, a world-wide, non-exclusive, irrevocable, royalty-free right and license to Use, with the right to allow third parties the right to Use on Registrant's and DIR Customers' (as defined in the MSA) behalf, the Deposit Materials, in each case in accordance with the applicable terms and conditions of the MSA. Depositor acknowledges and agrees that the foregoing right and license is in addition to, and not in lieu of, any rights or licenses granted to Registrant under any Ancillary Agreement.

6. TERM AND TERMINATION.

a. Term of Agreement. The initial term of this Escrow Agreement is for a period of one (1) year starting on the Effective Date. Thereafter, this Escrow Agreement shall automatically renew from year to year unless:

- (1) Depositor and Registrant jointly instruct Escrow Agent in writing at any time after the initial one (1) year term that this Escrow Agreement is terminated; or
- (2) this Escrow Agreement is terminated as otherwise provided hereunder.

b. Termination for Nonpayment. In the event of the nonpayment of fees properly due to Escrow Agent hereunder, Escrow Agent shall provide written notice of delinquency to Depositor and Registrant within thirty (30) days of such delinquency. Any party to this Escrow Agreement shall have the right to make the payment to Escrow Agent to cure such nonpayment. If the past-due payment is not received in full by Escrow Agent within sixty (60) days after the date of latest receipt of such notice, then Escrow Agent shall provide to Depositor and Registrant a second written notice of such delinquency. If the past-due payment is not paid to Escrow Agent within sixty (60) days after the date of the latest receipt of such second notice, then Escrow Agent shall have the right to terminate this Escrow Agreement any time thereafter by sending written notice of termination to Depositor and Registrant.

c. Termination for Convenience. Registrant reserves the right to terminate this Escrow Agreement at any time, with or without cause. Upon termination, Escrow Agent shall be entitled to payment of amounts owed up to the effective termination date. Notwithstanding the foregoing, in the event of any termination hereunder, Escrow Agent shall immediately reimburse Registrant on a pro rata basis for any advance payments or payments made to Escrow Agent for services not performed as of the effective termination date.

d. Default. The occurrence of any of the following shall constitute an event of default of Escrow Agent hereunder:

- (1) a breach, by Escrow Agent, of any term or provision of this Escrow Agreement, whether or not material;
- (2) any false or misleading representation or warranty made by Escrow Agent;
- (3) any affirmative act of insolvency by Escrow Agent, or the filing by Escrow Agent of any petition or action under any bankruptcy, receivership, insolvency, reorganization, dissolution, liquidation or moratorium law, or other similar proceedings instituted by or against Escrow Agent or against all or any part of its property under the Federal Bankruptcy Code or other law of the United States or of any other competent jurisdiction;
- (4) the filing of any involuntary petition under any bankruptcy statute against Escrow Agent, or the appointment of any receiver or trustee to take possession of the properties of Escrow Agent, unless such petition or appointment is set aside or withdrawn or ceases to be in effect within thirty (30) days from the date of said filing or appointment; or
- (5) the subjection of any of Escrow Agent's property to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency.

In the event of Escrow Agent's default, at Registrant's election, Registrant may continue with this Escrow Agreement, cancel or terminate this Escrow Agreement and/or have recourse to any other right or remedy available at law or in equity. Upon Registrant's election to cancel or terminate this Escrow Agreement, Registrant and Depositor shall enter into a new escrow agreement with a mutually agreed-upon third party escrow agent. Any and all terms and conditions stated herein shall, without modification, be incorporated into the new escrow agreement; provided, however, that Depositor agrees to negotiate in good faith with such escrow agent in the event such escrow agent or Registrant requests modification of any terms and conditions contained herein.

e. **Disposition of Deposit Materials Upon Termination.** Upon termination of this Escrow Agreement by joint instruction of Depositor and Registrant or for non-payment of Escrow Agent's fees properly due hereunder, Escrow Agent shall destroy, return or otherwise deliver the Deposit Materials in accordance with Depositor's instructions.

f. **Survival of Terms Following Termination.** Upon any termination or expiration of this Escrow Agreement, the following provisions of this Escrow Agreement shall survive:

- (1) this Section 6(f);
- (2) Depositor's warranties, representations, or covenants hereunder;
- (3) the obligations of confidentiality with respect to the Deposit Materials;
- (4) the rights and licenses granted hereunder if a Release Condition has occurred or if Depositor and Registrant have jointly instructed Escrow Agent to release the Deposit Materials;
- (5) the obligation to pay Escrow Agent any undisputed fees and expenses due;
- (6) the provisions of Section 8 and Section 9 below; and
- (7) any provisions in this Escrow Agreement which specifically state they survive the termination or expiration of this Escrow Agreement.

7. ESCROW AGENT COMPENSATION.

a. **Fee Schedule.** Escrow Agent is entitled to be paid its standard fees and expenses applicable to the services provided as such fees are listed on **Schedule A** attached hereto and incorporated herein by this reference. For any service not listed on **Schedule A**, Escrow Agent will provide a quote prior to rendering the service, if requested.

b. **Payment Terms.** All fees are due within sixty (60) days of receipt of Escrow Agent's invoice. Registrant shall be responsible for all fees and charges payable pursuant to this Escrow Agreement.

8. LIABILITY AND DISPUTES.

a. **Right to Rely on Instructions.** Escrow Agent may act in reliance upon any instruction, instrument or signature reasonably believed by Escrow Agent to be genuine. Escrow Agent may reasonably assume that any employee of Depositor or Registrant who gives any written notice, request or instruction has the authority to do so.

b. **Indemnification.** Escrow Agent shall be responsible for performing its obligations under this Escrow Agreement and acting in a reasonable and prudent manner with regard to the matters contemplated herein. Provided Escrow Agent has acted in the manner stated in the preceding sentence, Depositor and Registrant each agree to indemnify, defend and hold harmless Escrow Agent from any and all Losses arising out of third party claims relating to this Escrow Agreement. Notwithstanding anything to the contrary contained herein, Escrow Agent shall not be entitled to indemnification or payment of Losses in connection with any matter if (i) it did not act in good faith and in a manner reasonably believed to be in the best interests of Depositor and Registrant or (ii) such Loss arises from Escrow Agent's breach of this Escrow Agreement, negligence, gross negligence, willful or intentional misconduct, fraud, violation of applicable

Law, actions taken outside the scope of this Escrow Agreement or failure to observe standards of performance of a reasonably prudent escrow agent under similar circumstances.

c. Controlling Law. This Agreement shall be construed in accordance with the laws of the State of Texas without reference to the conflicts of law provisions thereof. For such purposes, the parties shall accept as due and binding service of legal process by receipted mail directed to the respective addresses provided herein for notices.

9. GENERAL PROVISIONS.

a. Publicity. Escrow Agent shall not use the name, trade name, service marks, trademarks, trade dress or logo of Registrant or Depositor in any form of publicity, whether as a press release, a brochure, a verbal announcement, an advertisement or any similar activity without Registrant's or Depositor's written consent, respectively.

b. Time is of the Essence. Depositor and Escrow Agent expressly acknowledge and agree that time is of the essence in the performance of their respective obligations hereunder. Registrant is relying on timely performance by Depositor and Escrow Agent and shall schedule operations and incur obligations to third parties in reliance upon such timely performances by Depositor and Escrow Agent, and shall sustain substantial Losses by reason of any failure of timely performance.

c. Remedies. All remedies available to Registrant for breach of this Escrow Agreement shall be cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

d. Waiver. The failure or delay of the Registrant and Depositor to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Escrow Agreement or to exercise any right, power or privilege under this Escrow Agreement, including, but without limiting the generality of the foregoing, rights, powers or privileges arising from course of performance, course of dealing and usage of trade, shall not operate or be construed as a relinquishment of future performance under this Escrow Agreement or as a waiver or modification of any of the same or similar rights, powers or privileges in the future, and the obligation of the Registrant and Depositor with respect to such future rights or performance shall continue in full force and effect as if such failure or delay had never occurred.

e. Entire Agreement. This Escrow Agreement, which includes the Attachments and Schedules described herein or attached hereto, embodies the entire understanding between all of the parties with respect to the subject matter hereto and supersedes all previous communications, representations or understandings, either oral or written, other than the terms and conditions of the Ancillary Agreements. In the event, and to the extent, of a conflict, express or implied, or any ambiguity between the terms of this Escrow Agreement and the terms of any Ancillary Agreements, the terms of this Escrow Agreement shall prevail. No amendment or modification of this Escrow Agreement shall be valid or binding unless signed by an authorized representative of each of the parties hereto, except that Attachment A need not be signed by Registrant.

f. Notices. Any notice or other communication required or permitted under this Escrow Agreement shall be in writing and shall be sent by certified mail, return receipt requested, telegram or hand delivered to the parties at the respective addresses set forth below or to such other address as the party to receive the notice designates by notice to the other party, provided that payments, notices and communications sent by Registrant shall be sufficient if sent by regular mail or any other reasonable method.

IF TO DEPOSITOR: _____

Attention: _____

With a copy to:

Attention: _____

IF TO ESCROW AGENT: Escrow Agent
Attn:
[ADDRESS]
Telephone:
Facsimile:

IF TO REGISTRANT: Texas Department of Information Resources
300 W. 15th Street, Suite 1300
Austin, Texas 78701
Attention: Aiko Neill, interim Director, Enterprise Shared Services (or, successor)
Telephone: (512) 475-0515
Email Address: aiko.neill@dir.texas.gov

With a copy to:

Texas Department of Information Resources
300 W. 15th Street, Suite 1300
Austin, Texas 78701
Attention: Martin Zelinsky, or his successor in office, General Counsel
Telephone: (512) 463-9884
Email Address: martin.zelinsky@dir.texas.gov

g. Assignment. Registrant may assign any interest in this Escrow Agreement or any of its duties or rights hereunder to the extent allowed by the MSA. Neither Depositor nor Escrow Agent may assign this Escrow Agreement without the prior written consent of Registrant. Any assignment or attempted assignment of this Escrow Agreement other than in accordance with this Section shall be void and of no effect. Escrow Agent shall not mortgage, grant a security interest in, pledge, transfer, delegate or assign, in whole or in part, this Escrow Agreement, whether voluntary, involuntary or by operation of law, without the prior written consent of Registrant. Upon Registrant’s consent to the foregoing, Escrow Agent warrants that all said successors shall comply with any and all obligations arising under this Escrow Agreement and shall be liable for all obligations breached by Escrow Agent. Furthermore, Escrow Agent warrants that as a condition to any of the foregoing, Escrow Agent shall covenant in writing with each successor that said successor shall be liable for any and all obligations arising under this Escrow Agreement and for any breach committed by Escrow Agent in the past.

h. Headings. The Article and Section headings contained in this Escrow Agreement are embodied herein for the purpose of convenience of reference only and are not intended to limit or affect any terms or conditions hereof.

i. Severability. In the event any provision of this Agreement is found to be invalid, voidable or unenforceable, the parties agree that unless it materially affects the entire intent and purpose of this Escrow Agreement, such invalidity, voidability or unenforceability shall affect neither the validity of this Escrow Agreement nor the remaining provisions herein, and the provision in question shall be deemed to be replaced with a valid and enforceable provision most closely reflecting the intent and purpose of the original provision.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto, through their duly authorized representatives, have entered into this Escrow Agreement as of the later of the dates set forth below.

DEPOSITOR: _____

By: _____

Name: _____

Title: _____

Date: _____

**REGISTRANT: THE STATE OF TEXAS, acting by
and through THE TEXAS DEPARTMENT OF
INFORMATION RESOURCES**

By: _____

Name: _____

Title: _____

Date: _____

ESCROW AGENT: _____

By: _____

Name: _____

Title: _____

Date: _____

SCHEDULE A

FEES

Fees to be paid shall be as follows:

Initialization fee (one time only) \$ _____
(\$ _____ for current clients)

Annual maintenance fee \$ _____
• includes two Deposit Material Updates (\$ _____/product)
• includes two cubic feet of storage space (foreign \$ _____)

International (outside of U.S.) - \$ _____/product

Additional Updates (\$ _____/product)
(above two per year)

Additional Storage Space (\$ _____/cubic ft.)

Payable by Depositor or Registrant Only Upon Release Request:

Due Upon Depositor's or Registrant's \$ _____ for initial 2 hrs
Request for Release of Deposit Materials
\$ _____/hour for
additional hours

SCE ATTACHMENT

A-1 Product Name _____
Version # _____

Additional products (and versions) provided to Registrant hereafter shall be deposited in source code form with Escrow Agent and deemed included within the scope of this Exhibit.

Prepared and Confirmed by:

Title:

Date:

Signature:

Type of deposit:

_____ Initial Deposit
_____ Update Deposit to replace current deposits
_____ Other (please describe) _____

Items Deposited:

	Quantity	Media Type	Description of Material
A)	_____	_____	_____
B)	_____	_____	_____
C)	_____	_____	_____

A-2 Product Name _____
Version # _____

Prepared and Confirmed by:

Title:

Date:

Signature:

Type of deposit:

_____ Initial Deposit
_____ Update Deposit to replace current deposits
_____ Other (please describe) _____

Items Deposited:

	Quantity	Media Type	Description of Material
A)	_____	_____	_____
B)	_____	_____	_____
P./C)	_____	_____	_____