

SOFTWARE ESCROW AGREEMENT

THIS AGREEMENT effective as of [DATE], [YEAR]

Between:

The State of Alaska
Department of Transportation & Public Facilities
(Licensee)
3132 Channel Drive
Juneau, Alaska 99801
(THE FIRST PARTY)

and

Contractor

("Developer")
(THE SECOND PARTY)

And

Escrow Agency
("Escrow Agent")
(THE THIRD PARTY)

WHEREAS Developer has entered into a license agreement dated _____ (the "License") with Licensee wherein Developer has licensed the use of certain materials and proprietary software (the "Materials") in connection with the development and production of an Electronic Assisted Crew Management system tentatively " (the "Project"); and

WHEREAS Developer wishes to protect the confidentiality of its Materials while providing Licensee with access to the Materials in the event that certain circumstances described in this Agreement occur; and

WHEREAS Developer wishes to deposit such Materials in escrow to be held by Escrow Agent in accordance with the terms and conditions of this Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises, mutual covenants and agreements herein and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Appointment of Escrow Agent and Escrow Fees

(a) Developer and Licensee hereby appoints Escrow Agent to hold the Materials as defined herein in accordance with the terms and conditions of this Agreement and Escrow Agent agrees to act in such capacity.

(b) In consideration for the services to be performed hereunder, Developer shall pay to Escrow Agent a monthly escrow fee of \$<insert> dollars. In the event of non-payment of escrow fees, Escrow Agent will give Developer and Licensee sixty (60) days notice of default. In the event that the sixty (60) day notice period elapses without Escrow Agent having received payment, Escrow Agent shall have the right, without further notice being required and without any liability to any party whatsoever, to terminate this Agreement and destroy the Materials or, at the request of the Licensee, release and deliver the Materials to the Licensee.

2. Term of this Agreement

(a) The term of this Agreement shall commence on the date of this Agreement and shall continue in full force and effect so long as the License remains in full force and effect, unless this Agreement is terminated as hereinafter set out.

3. Materials Deposited in Escrow

(a) Developer agrees to deposit with Escrow Agent one copy of all the constituent elements of the proprietary software including but not limited to text, data, images, animation, graphics, video and audio segments and source and object code and user and system documentation of all software licensed to Licensee in connection with the Electronic Assisted Crew Management System Project (collectively, the "Materials")

4. Modifications to Materials to be Deposited

(a) Developer may, from time to time, update, improve or modify the Materials used by the Licensee in connection with the Web Project. Developer agrees to deposit or cause to be deposited with the Escrow Agent, at the time such updates, improvements or modifications are made, one copy of such modified Materials which shall be deemed part of the Materials deposited in escrow under this Agreement.

5. Release and Delivery of Materials by Escrow Agent

(a) The occurrence of any of the following events ("Release Events") shall provide to the Licensee the right to request the Escrow Agent to release and deliver the Materials held in escrow to the Licensee:

- (i) Developer ceases to carry on business;
- (ii) Developer becomes bankrupt, insolvent or the subject of receivership;
- (iii) Developer commits a material breach of the License.

6. Notice of Release Event

(a) Should Licensee wish the Escrow Agent to release and deliver to the Licensee the Materials held in escrow upon the occurrence of any of the Release Events, the Licensee shall give thirty (30) days written notice to the Escrow Agent and Developer specifying the Release Event in question. If Developer wishes to refute the occurrence of the Release Event, it shall give written notice to Escrow Agent and Licensee prior to the expiry of the thirty (30) day period and this Agreement will remain in full force and effect. If Developer does not give written notice of its refutation to Escrow Agent and Licensee prior to the expiry of the thirty (30) day period, Escrow Agent shall release and deliver the Materials held in escrow to Licensee.

7. Termination

(a) In the event that Developer wishes to terminate this Agreement, Developer shall give thirty (30) days written notice to Escrow Agent and Licensee. If Licensee wishes to object to the termination, it shall give written notice of its objection to Escrow Agent and Developer prior to the expiry of the thirty (30) day period and this Agreement will remain in full force and effect. If Licensee does not give written notice of its objection to Escrow Agent and Developer prior to the expiry of the thirty (30) day period, this Agreement shall be deemed terminated and Escrow Agent shall release and deliver the Materials held in escrow to Developer.

8. Representations, Warranties and Indemnifications

(a) Escrow Agent represents and warrants that:

(i) Other than being a party to this Agreement, it is an independent third party in respect to the Developer and Licensee and is not an affiliated, associated or related entity to Developer or Licensee;

(ii) It has the right and capacity to enter into this Agreement and fully perform all of its obligations and provide the services hereunder;

(iii) It shall use commercially reasonable efforts to keep the Materials in safe keeping and perform its obligations as Escrow Agent in accordance with the terms of this Agreement;

(iv) It shall not disclose to any third party or make use of the Materials without the express written approval of Developer and Licensee;

(v) It shall take such steps as are reasonably necessary and desirable to protect the confidentiality of the Materials and prevent the unauthorized disclosure thereof, including without limitation storing the Materials in such a way to preserve the confidentiality of the Materials and restrict disclosure of and access to the Materials.

(b) Escrow Agent shall indemnify and save harmless Developer and the Licensee from any and all damages, costs, liability, expenses, including reasonable legal fees, suffered by Developer and/or Licensee as result of any breach of its representations and warranties. Notwithstanding the forgoing, Escrow Agent shall not be held responsible or liable for any acts of Developer and/or Licensee and Escrow Agent shall have no liability under this Agreement whatsoever except for its acts of negligence, misconduct or a material breach of this Agreement. Developer

and Licensee shall indemnify and save harmless Escrow Agent from any and all damages, costs and liability suffered by Escrow Agent arising as result of the breach of this Agreement or the License or breach or infringement any law or right of any third party by Developer and/or Licensee.

9. Notice

(a) Any notice required or permitted to be given hereunder shall be in writing and shall be deemed given

(b)

(i) when delivered personally to any officer of the party being notified; or

(ii) on the third business day after being sent by registered or certified mail, postage prepaid, facsimile telecopier, addressed as follows:

To Developer:

[Contact Name]

[Address]

[Phone & Fax Number]

To Licensee:

State of Alaska, Department of Transportation & Public Facilities

[Address]

[Phone & Fax Number]

To Escrow Agent:

[Contact Name]

[Address]

[Phone & Fax Number]

10. Force Majeure

(a) (Impossibility to perform) The contractor is not liable for the consequences of any failure to perform, or default in performing, any of its obligations under this Agreement, if that failure or default is caused by any unforeseeable Force Majeure, beyond the control of, and without the fault or negligence of, the contractor. For the purposes of this Agreement, Force Majeure will mean war (whether declared or not); revolution; invasion; insurrection; riot; civil commotion; sabotage; military or usurped power; lightning; explosion; fire; storm; drought; flood; earthquake; epidemic; quarantine; strikes; acts or restraints of governmental authorities affecting the project or directly or indirectly prohibiting or restricting the furnishing or use of materials or labor required; inability to secure materials, machinery, equipment or labor because of priority, allocation or other regulations of any governmental authorities.

11. Severability

(a) In the event any portion of this Agreement is deemed to be invalid or unenforceable, such portion shall be deemed severed and the parties agree that the remaining portions of this Agreement shall remain in full force and effect.

12. Assignment

(a) Neither party may assign or otherwise transfer this Agreement without the written consent of the other parties. This Agreement shall enure to the benefit of and bind the parties hereto and their respective legal representatives, successors and assigns.

13. Governing Law

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Alaska.

14. Entire Agreement

(a) This Agreement, including the recitals, sets forth the entire agreement between the parties with respect to the subject matter hereof and shall be amended only by a writing signed by the parties.

15. Counterparts

(a) This Agreement may be executed in counterparts in the same form and such parts so executed shall together form one original document and be read and construed as if one copy of the Agreement had been executed.

IN WITNESS WHEREOF the parties hereto have executed this Agreement effective this _____ day of _____, 20__.

State of Alaska, Department of Transportation & Public Facilities

by: _____

<Developer>

by: _____

<Escrow Agency>

by: _____