



SUMMARY OF TERMS

The following Summary of Terms ("Summary") together with the Escrow Agreement Terms and Conditions ("Terms and Conditions") and any exhibits or schedules attached hereto sets forth terms on which Silicon Valley Bank (the "Escrow Agent") will facilitate and regularize the receipt of monies due, and disbursement of those monies in connection with the Transaction (as described below). The Escrow Agent will receive funds due and disburse the funds per instructions described in this Escrow Agreement (referred herein as "Agreement"). This Agreement is entered into among the Escrow Agent, Depositor and Beneficiary, collectively referred to herein as "Parties." The details listed below set forth a summary of the terms of the Account which are explained in further detail in the Terms and Conditions. If there is a conflict between the terms of this Summary and those of the Terms and Conditions, the terms of the Summary will control. If any provision of this Summary is opposite a box that is not checked or otherwise marked to indicate that it is applicable, such provision shall not apply to this Agreement and shall be null, void and of no force or effect. Capitalized terms used but not defined herein shall have the definitions ascribed to such terms in the Terms and Conditions.

Effective Date: This Agreement shall become effective on the day and year of the last signature received below.

Escrow Agent: Silicon Valley Bank, its principal place of business at 3003 Tasman Drive, Santa Clara, CA 95054.

Depositor: (individually and collectively, "Depositor")
Beneficiary: (individually and collectively, "Beneficiary")
Address:
Address:

Escrow Account #: (Assigned upon receipt of signed escrow agreement)

Transaction: (Please provide a brief description of the purpose of escrow transaction (e.g.) asset purchase agreement dated MM/DD/YY)

Escrow Amount: \$

This Agreement contemplates (Select One):

- A Single Disbursement
Multiple Disbursements (if selected, the Disbursement Eligible Date shall be)

Disbursement Deadline Date:

Fees. The fees of the Escrow Agent for services rendered in connection with this Escrow Agreement are outlined in Exhibit A. It is the responsibility of the Responsible Party to pay the required fees to the Escrow Agent. Any fees not paid by the Responsible Party will be deducted from the Escrow Amount prior to disbursement of the funds.



**ESCROW AGREEMENT
(SINGLE AND MULTIPLE DISBURSEMENT)**

The Depositor and Beneficiary each state that they have read the Agreement, including those terms found in the Terms and Conditions pages which follow this signature page, understand and agree to it, and acknowledge receipt of a copy of the same. The Depositor and the Beneficiary further acknowledge that this Agreement shall not be effective until signed by the Escrow Agent.

By signing this Agreement in the space indicated below, each party signifies its intent to accept the terms of the Agreement and be legally bound as of the Effective Date. All parties may execute this form by electronic means and each party recognizes and accepts the use of electronic signatures and records by any other party in connection with the storage and execution of this form and its items as provided for in the federal Electronic Signatures in Global and National Commerce Act and any applicable state law governing electronic transactions.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year of the last signature below.

Depositor:

By: _____
Name/Title: _____
Date: _____
Phone: _____
Email: _____

Beneficiary:

By: _____
Name/Title: _____
Date: _____
Phone: _____
Email: _____

Escrow Agent:

Silicon Valley Bank

By: _____
Name/Title: _____
Date: _____

Address for Notices:

Attn: Despot Escrow Services
Silicon Valley Bank
3003 Tasman Drive, HF-151
Santa Clara, CA 95054
Fax: (408) 728-9746
Email: escrowservices@svb.com



**ESCROW AGREEMENT
TERMS AND CONDITIONS**

The Summary is attached hereto and made a part of these Terms and Conditions, and together the Summary, these Terms of Conditions and any exhibits or schedules attached hereto form the Escrow Agreement (the "Agreement") between Escrow Agent, Depositor, and Beneficiary, dated as of the Effective Date. To the extent any provision of the Summary conflicts with these Terms and Conditions, the terms of the Summary shall control. Terms not otherwise defined herein shall have the meanings ascribed to them in the Summary. The parties hereby agree as follows:

SECTION 1. APPOINTMENT OF THE ESCROW AGENT.

Depositor and Beneficiary do hereby appoint, constitute and designate Silicon Valley Bank as their Escrow Agent for the purposes set forth herein, and the Escrow Agent accepts the agency created under this Agreement and agrees to perform the obligations as stated herein.

SECTION 2. CONFLICT WITH OTHER AGREEMENTS.

Depositor and Beneficiary agree that this Agreement supersedes any conflicting terms contained in any other agreement or understanding pertaining to the monies.

SECTION 3. DELIVERIES TO ESCROW AGENT.

The Depositor shall deliver to the Escrow Agent via wire transfer or book transfer the sum identified in the Summary as the Escrow Amount. If the "Multiple Disbursements" option is selected in the Summary, Depositor and Beneficiary agree that additional funds may be deposited into the Escrow account during the term of the Escrow agreement. Escrow Agent agrees to hold and disburse said amount in accordance with the terms and conditions of this Agreement and for the uses and purposes stated herein. Such amount shall be delivered into escrow in accordance with the instructions in Exhibit B.

SECTION 4. INVESTMENT OF FUNDS.

All such funds will be deposited to the Escrow Account, which shall be a non-interest bearing account.

SECTION 5. RESPONSIBILITIES OF ESCROW AGENT.

The duties and responsibilities of the Escrow Agent shall be those expressly set forth in this Agreement. No implied duties of the Escrow Agent shall be read into this Agreement and the Escrow Agent shall not be subject to, or obligated to recognize any other agreement between or direction or instruction of, any or all of the parties hereto. The Escrow Agent shall also not be responsible for the duties of Depositor and Beneficiary to each other.

SECTION 6. DISBURSEMENTS.

Section 6.1. Any requests to extend the dates noted in this Section 6 require the written consent of both Depositor and Beneficiary. Such request is not effective until confirmed in writing by Escrow Agent.

If no option is checked in the Summary indicating whether this Agreement is subject to Single Disbursement or Multiple Disbursement, this Agreement shall be deemed a "Single Disbursement" Agreement and the Sections applicable shall apply.

Section 6.2. If the "Single Disbursement" Option is checked on the Summary, then on or after the Disbursement Eligible Date, Depositor and Beneficiary agree to deliver to the Escrow Agent joint written instructions, substantially in the form of Exhibit C hereto, executed by both the Depositor and Beneficiary. Upon instruction, the Escrow Agent shall release the entire Escrow Amount, less any fees payable in connection with this Escrow, to the Beneficiary by and through an account in Beneficiary's name in accordance with the wire transfer instructions contained therein.

Section 6.3. If the "Multiple Disbursement" option is checked on the Summary, Depositor and Beneficiary agree, from time to time, to deliver to the Escrow Agent joint written instructions, substantially in the form of Exhibit C hereto and executed by both the Depositor and Beneficiary, requesting disbursement of any or all portion of funds to an account titled in the name of the Depositor and/or Beneficiary. Escrow Agent shall release requested amount, less any fees payable in connection with this Escrow, to the Depositor and/or Beneficiary in accordance with wire instructions contained therein.



Section 6.4. Regardless of whether the "Single Disbursement" or "Multiple Disbursement" option is checked in the Summary, Depositor and Beneficiary anticipate all funds will be disbursed by the Disbursement Approval Deadline Date identified in the Summary. Escrow Agent shall return the Escrow Amount, less any fees payable in connection with this Escrow, to the Depositor by and through an account in Depositor's name if any funds remain in the Escrow Account after such date.

Section 6.5. If the Disbursement Eligible Date has not yet occurred, and except as provided in Section 12 below, if Escrow Agent resigns or is terminated for any reason, Escrow Agent shall disburse the property in accordance with Section 6.4 above.

SECTION 7. INSTRUCTIONS AND DIRECTIONS TO AGENT.

The Escrow Agent is authorized, in its sole discretion, to disregard any and all notices or instructions given by any person or entity, except notices or instructions as provided for in this Agreement by the undersigned or an Authorized Signer, if designated, and orders or process of any court entered or issued with or without jurisdiction. If any property subject hereto is at any time attached, garnished, or levied upon under any court order, or in case the payment, assignment, transfer, conveyance or delivery of any such property shall be stayed or enjoined by any court order, or in case any order, judgment, or decree shall be made or entered by any court affecting such property or any party hereto, then in any such events, the Escrow Agent is authorized, in its sole discretion, to rely upon and comply with any such order, writ, judgment or decree with which it is advised by legal counsel of its own choosing, and if it complies with any such order, writ, judgment or decree it shall not be liable to any other party hereto or to any other person, firm or corporation by reason of such compliance even though such order, writ, judgment or decree may be subsequently reversed, modified, annulled, set aside, or vacated.

SECTION 8. Agent's Right to Rely on Genuineness of Instrument.

The Escrow Agent may rely, and shall be protected in acting or refraining from acting, upon any instrument furnished to it hereunder and believed by it to be genuine and believed by it to have been signed or presented by the appropriate party or parties described in this Agreement. The Escrow Agent shall not be responsible nor liable in any respect on account of the lack of authority, or lack of right of any such person executing, or delivering or purporting to execute, deposit or deliver any such document, funds or endorsement of this Agreement or on account of or by reason of forgeries, or false representations.

SECTION 9. Indemnity and Hold Harmless of Bank.

Depositor and Beneficiary hereby agree to indemnify and hold harmless Escrow Agent, its affiliates and their respective directors, officers, agents and employees ("Indemnified Persons") against any and all claims, causes of action, liabilities, lawsuits, demands and damages (each, a "Claim") arising from this Agreement, including without limitation, any and all court costs and reasonable attorneys' fees, in any way related to or arising out of or in connection with this Agreement or any action taken or not taken pursuant hereto, including, but not limited to, any Claims arising as a result of Escrow Agent's adherence to instructions from Depositor and Beneficiary; provided that no Indemnified Person shall be entitled to be indemnified to the extent that such Claims result from an Indemnified Person's gross negligence or willful misconduct. This provision shall survive the termination of this Agreement.

SECTION 9. Disagreements.

In the event of any disagreement between the parties and/or any other person, resulting in an adverse claim or demand being made in connection with this Agreement, Escrow Agent shall not become liable to the parties for damages or interest for Escrow Agent's failure or refusal to comply with conflicting or adverse demands, and Escrow Agent may continue to refuse to act until the disagreement is resolved by the parties or by the court in which the Escrow Agent files a request for interpleader.

SECTION 10. JURY TRIAL WAIVER; JUDICIAL REFERENCE

TO THE EXTENT ALLOWED BY LAW, IF A DISPUTE ARISES BETWEEN ANY PARTY REGARDING THE AGREEMENT OR ANY SERVICE, ALL PARTIES WAIVE ANY RIGHT THAT IT MAY HAVE TO REQUEST A JURY TRIAL. EACH PARTY HAS REVIEWED THIS WAIVER WITH ITS COUNSEL. WITHOUT INTENDING IN ANY WAY TO LIMIT THE PARTIES' AGREEMENT TO WAIVE THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY, if and to the extent the above waiver of the right to a trial by jury is not enforceable, the parties hereto agree that any and all disputes or controversies of any nature between them arising at any time shall be decided by a reference to a referee who shall be a retired state or federal judge with judicial experience in civil matters, mutually selected by the parties (or, if they cannot agree, by the Presiding Judge of the Santa Clara County, California Superior Court) appointed in accordance with California Code of Civil Procedure Section 638 (or pursuant to comparable provisions of federal law if the dispute falls within the exclusive jurisdiction of the federal courts), sitting without a jury, in Santa Clara County, California; and the parties hereby submit to the jurisdiction of such court. The referenced proceedings shall be conducted pursuant to and in accordance with the provisions of California Code of Civil Procedure Sections 638 through 645.2, inclusive. The referee shall have the power,

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among others, to grant provisional relief, including without limitation, entering temporary restraining orders, issuing preliminary and permanent injunctions and appointing receivers. All such proceedings shall be closed to the public and confidential, and all records relating thereto shall be permanently sealed. If during the course of any dispute, a party desires to seek provisional relief, but a referee has not been appointed at that point pursuant to the judicial reference procedures, then such party may apply to the appropriate court in the Northern District of the State of California for such relief. The proceeding before the referee shall be conducted in the same manner as it would be before a court under the rules of evidence applicable to judicial proceedings. The parties shall be entitled to discovery, which shall be conducted in the same manner as it would be before a court under the rules of discovery applicable to judicial proceedings. The referee shall oversee discovery and may enforce all discovery rules and orders applicable to judicial proceedings in the same manner as a trial court judge. The parties agree that the selected or appointed referee shall have the power to decide all issues in the action or proceeding, whether of fact or of law, and shall report a statement of decision thereon pursuant to California Code of Civil Procedure Section 644(a). The referee shall also determine all issues relating to the applicability, interpretation and enforceability of this paragraph. The following matters shall not be subject to reference to a referee as set forth in this paragraph: (i) non-judicial foreclosure of any collateral (real or personal property), (ii) exercise of self-help remedies (including set off or recoupment), (iii) appointment of a receiver and (iv) temporary, provisional or ancillary remedies (including writs of attachment, writs of possession, temporary restraining orders or preliminary injunctions).

SECTION 11. WAIVER.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT OR ANYWHERE ELSE, DEPOSITOR AND BENEFICIARY EACH WAIVE, AND THEY AGREE THAT THEY SHALL NOT SEEK FROM ESCROW AGENT UNDER ANY THEORY OF LIABILITY (INCLUDING WITHOUT LIMITATION ANY THEORY IN TORT), ANY SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING IN CONNECTION WITH THIS AGREEMENT.

SECTION 12. RESIGNATION OF THE AGENT.

The Agent reserves the right to resign as Escrow Agent at any time by giving thirty (30) days advance written notice to Depositor and Beneficiary. Within thirty days after receipt of notice of resignation, Depositor and Beneficiary shall inform the Escrow Agent of a successor escrow agent to which the Escrow Agent shall distribute the property then held hereunder, less its fees, costs and expenses (including counsel fees and expenses). If Depositor and Beneficiary are unable to appoint a successor escrow agent within thirty days and there is property held under this Agreement, then Depositor and Beneficiary shall cause the property to be disbursed in accordance with Section 6.

SECTION 13. GENERAL PROVISIONS

Section 13.1. Choice of Law. This Agreement will be governed by the laws of the State of California without regard to its conflicts of law provisions. All parties hereto each submit to the exclusive jurisdiction of the State and Federal courts in Santa Clara County, California.

Section 13.2. Call Monitoring and Recording. Depositor and Beneficiary authorizes Escrow Agent to monitor, and to record, telephone conversations and other electronic communications Depositor and Beneficiary has with Escrow Agent and with Escrow Agent's representatives for reasonable business purposes, including security and quality assurance. Escrow Agent will not remind Depositor and Beneficiary or Grantor that Escrow Agent may be monitoring or recording a call at the outset of the call unless required by law to do so.

Section 13.3. Successors and Assigns. This Agreement binds and is for the benefit of the successors and permitted assigns of each party. Depositor and Beneficiary may not assign this Agreement or any rights or obligations hereunder without Escrow Agent's prior written consent which may be granted or withheld in Escrow Agent's sole discretion. Escrow Agent has the right, without the consent of or notice to Depositor and Beneficiary, to sell, transfer, assign, negotiate, or grant participation in all or any part of, or any interest in, Escrow Agent's obligations, rights, and benefits under this Agreement and any other agreed documents.

Section 13.4. Time of Essence. Time is of the essence for the performance of any obligations in this Agreement.

Section 13.5. Notices. Any notice or other communication shall be in writing and shall be sent by United States mail, overnight courier, facsimile or electronic mail to the noted addresses set forth below the parties' signatures. For all purposes hereof any notice so mailed shall be as effectual as though served upon the person of the party to whom it was mailed at the time of the deposit in the United States mail, faxed or electronic mail.

Section 13.6. Severability of Provisions. Each provision of this Agreement is severable from every other provision in determining enforceability of any provision.



Section 13.7. *Counterparts.* For convenience, this Agreement may be executed in any number of counterparts with the same effect as if each party had executed the same document. This shall include any electronic signatures or electronic execution methods.

Section 13.8. *Integration; Amendments.* This Agreement, any Exhibits herein, as well as any related documents contain the entire understanding of the parties on this subject. No purported amendment or modification of any document, or waiver, discharge or termination of any obligation shall be enforceable or admissible unless, and only to the extent, expressly set forth in a writing signed by the party against which enforcement or admission is sought. Without limiting the generality of the foregoing, no oral promise or statement, nor any action, inaction, delay, failure to require performance or course of conduct shall operate as, or evidence, an amendment, supplement or waiver or have any other effect on the Agreement.

Section 13.9. *Term and Survival.* Unless terminated earlier, this Agreement shall remain in effect until all amounts received by the Escrow Agent have been disbursed as provided herein above. In no case will the termination of this Agreement relieve the parties of their responsibility to pay any fees due to the Escrow Agent and payable under this Agreement. All covenants, representations and warranties made in this Agreement continue in full force until this Agreement has terminated pursuant to its terms (other any other obligations which, by their terms, are to survive the termination of this Agreement).

Section 13.10. *Attorneys' Fees, Costs and Expenses.* In any action or proceeding between Depositor and Beneficiary and Escrow Agent arising out of or relating to the documents, the prevailing party shall be entitled to recover its reasonable attorneys' fees and other costs and expenses incurred, in addition to any other relief to which it may be entitled.

Section 13.11. *Electronic Execution of Documents.* The words "execution," "signed," "signature" and words of like import in any documents shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity and enforceability as a manually executed signature or the use of a paper-based recordkeeping systems, as the case may be, to the extent and as provided for in any applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act.

Section 13.12. *Headings.* The headings used in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

Section 13.13. *Construction of Agreement.* In cases of uncertainty this Agreement shall be construed without regard to which of the parties caused the uncertainty to exist.

Section 13.14. *Relationship.* The relationship of the parties to this Agreement is determined solely by the provisions of this Agreement. The parties do not intend to create any agency, partnership, joint venture, trust, fiduciary or other relationship not contemplated or agreed to in this Agreement with duties or incidents different from those of parties to an arm's-length contract.

Section 13.15. *Third Parties.* Nothing in this Agreement, whether express or implied, is intended to: (a) confer any benefits, rights or remedies under or by reason of this Agreement on any persons other than the express parties to it and their respective permitted successors and assigns; (b) relieve or discharge the obligation or liability of any person not an express party to this Agreement; or, (c) give any person not an express party to this Agreement any right of subrogation or action against any party to this Agreement.

Section 13.16. *Legal Process.* Escrow Agent reserves all rights, and Depositor and Beneficiary explicitly acknowledge and agree to such reservation, related to Escrow Agents obligations under any legal process served unto it in any way related to the Depositor and Beneficiary. In any action or proceeding between Escrow Agent and any other party to this Agreement, the prevailing party will be entitled to recover its reasonable attorneys' fees and other reasonable costs and expenses incurred, in addition to any other relief to which it may be entitled.

Section 13.17. *Acknowledgment and Amendments.* All Parties understand and agree to the terms and conditions in this Agreement. Parties agree that all terms under this Agreement, including any obligations on Escrow Agent, are subject to applicable laws. Either Depositor or Beneficiary may be subject to other agreements with Escrow Agent. By signing this Agreement, the Parties acknowledge that they have read this Agreement, and Depositor and/or Beneficiary have discussed this Agreement with a lawyer of their choosing, if desired, or that Depositor and Beneficiary have been afforded such opportunity and that Depositor and Beneficiary are signing this Agreement without duress of any kind. The provisions of this Agreement may only be altered, modified or amended by instrument in writing duly executed by all of the Parties hereto.

Section 13.18. *Interpretation.* This Agreement is the most reliable evidence of the Agreement between Parties. If any Party goes to court for any reason, that Party can use a copy, filmed or electronic, of any periodic statement, this Agreement, or any



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other document to prove that Parties obligations or that a transaction has taken place. The copy, microfilm, microfiche, or optical image will have the same validity as the original. Unless otherwise specified herein, all "days" referred to in this Agreement shall be business days. Whenever under the terms hereof the time giving a notice or performing an act falls upon a Saturday, Sunday or federal holiday, such time shall be extended to the next following business day.

Section 13.19. *Errors and Omissions*. Typos on documents which are not material to the terms of the Agreement, such as accidental misspellings or clerical errors, shall not affect the validity of this Agreement.

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Exhibit A Fee Schedule

In accordance with this Agreement, the following fees are due to the Escrow Agent and shall be assessed against the Funds held in escrow unless specifically identified otherwise:

Table with 4 columns: Type of Fee, Amount, Due, and OPTIONAL: Responsible Party. Rows include Escrow Fee*, Renewal Fee, and Disbursement Fees.

* An additional fee may be charged if revisions to the agreement are requested (you will be notified if the additional fee applies at the time of the request).



Exhibit B
Delivery Instructions

In accordance with this Agreement, all funds to be deposited to the Escrow Account should be delivered as follows:

Remittance Via Wire Transfer:

Account Name: _____ Escrow Account

Bank: Silicon Valley Bank

Account #: _____

ABA #: 121140399

Address: Silicon Valley Bank
3003 Tasman Drive
Santa Clara, CA 95054



Exhibit C Escrow Account Disbursement Instruction Letter

Silicon Valley Bank
Deposit Escrow Services
3003 Tasman Drive, HF-151
Santa Clara, CA 95054
Fax: (408) 728-9746

Escrow Agreement dated: _____

Depositor: _____

Beneficiary: _____

This letter is delivered pursuant to the Escrow Agreement identified above, by and among the Depositor, Beneficiary and Silicon Valley Bank as Escrow Agent.

The Transaction relating to this Agreement: [] Is Ongoing (Multiple Disbursement)
[] Is Final (Funds to be sent to Beneficiary)

The Depositor and Beneficiary hereby instruct Escrow Agent to release funds from the Escrow Account into the account in the name of Depositor or Beneficiary as identified below.

\$ _____

Name on Account: _____
Bank Name: _____
Account Number: _____
Bank ABA/Routing Number: _____
Reference: _____

The undersigned has caused its duly authorized representative to execute this letter as of the date hereof.

DEPOSITOR

BENEFICIARY

By: _____
Name/Title: _____
Date: _____

By: _____
Name/Title: _____
Date: _____