Appendix 5B

INTERNET DOMAIN NAME ESCROW AGREEMENT

ESCROW AGREEMENT

This ESCROW AGREEMENT (the “Agreement”) is made on [DATE] (the “Effective Date”) by and among [BUYER] (“Buyer”), [SELLER] (“Seller”) (Buyer and Seller collectively referred to as “Users”), and [ESCROW AGENT] (the “Escrow Agent”) for the provision of certain escrow services (the “Services”) by the Escrow Agent as provided under the terms and conditions of this Agreement.

BACKGROUND

A. Users have entered into an Internet Domain Name Purchase Agreement, dated [PURCHASE AGREEMENT DATE] (the “Purchase Agreement”), for the purchase and sale of the internet domain name <example.com> (the “Domain Name”). Under the Purchase Agreement, Seller has agreed to sell to Buyer all of his rights, title, and interest in and to the Domain Name. Pursuant to the Purchase Agreement, payment of the purchase price of [PURCHASE PRICE] (the “Purchase Price”) will occur over a period of up to nine (9) years (the “Escrow Period”).

B. Users have agreed to vest control over the Domain Name with the Escrow Agent, to transfer payments toward the Purchase Price to the Escrow Agent, and for the Escrow Agent to release the payments pursuant to the terms of this Escrow Agreement. Capitalized terms not otherwise defined in this Agreement will have the meaning ascribed to them in the Purchase Agreement, a copy of which has been delivered to Escrow Agent.

AGREEMENTS

1. Obligations.

(a) Deposit. By 5:00 p.m. PT on [DATE], Buyer shall remit the sum of [INITIAL PAYMENT AMOUNT] (the “Initial Payment”), plus transfer and escrow fees in the amount of [INITIAL ESCROW FEE] (the “Initial Fee”), to the Escrow Agent via wire transfer. The Initial Payment and all subsequent Payments (as defined below) will be held in a noninterest-bearing account of the Escrow Agent and will not earn interest or other income.

(b) Transfer of Domain Name to Control of Escrow Agent. Escrow Agent shall create an account at an ICANN-accredited registrar (the “Registrar”) in the name of Buyer, using the physical contact information, telephone number, and fax number of Buyer, but the email address of the Escrow Agent (the “Escrow Registration Account”). Buyer hereby irrevocably appoints Escrow Agent as its agent to receive notice from the Registrar of the Domain Name, in connection with the Domain Name, during the Escrow Period. Escrow Agent shall not provide the username or password to the Escrow Registration Account to the Buyer or Seller, or change the account information in the Escrow Registration Account, except as provided in this Agreement. Upon confirmation of receipt of the Initial Payment and Initial Fees by the Escrow Agent, Seller shall transfer the Domain Name to the Escrow Registration Account. Both Seller and Buyer agree to cooperate with any reasonable instructions required to complete the transfer of the Domain Name to the Escrow Registration Account in a timely manner.

(c) Release of Initial Payment to Seller. Upon confirmation that the Domain Name has been transferred to the Escrow Registration Account, Escrow Agent shall transmit the Initial Payment to an account designated by Seller and retain the Initial Fee as partial payment of its fees for Services under this Agreement.

(d) Use of Domain Name During Escrow Period. Upon confirmation that the Domain Name has been transferred to the Escrow Registration Account, Escrow Agent will cause the Domain Name to be associated with the nameservers specified by Buyer, as may be modified by Buyer from time to time during the Escrow Period by written instruction to the Escrow Agent.

(e) Subsequent Payments Towards Balance of Purchase Price. By 5:00 p.m. PST on [DATE], and as of 5:00 p.m. PT on each of the [NUMBER OF PAYMENTS] anniversaries of such date thereafter, Buyer shall remit additional payments to Escrow Agent by wire transfer in the amount of [PAYMENT AMOUNT] (each, a “Payment”) plus annual escrow fees in the amount of [ESCROW FEE AMOUNT] (each, an “Annual Fee”). Within three days of receipt of each Payment and Annual Fee, Escrow Agent shall provide written confirmation of receipt to Buyer and Seller via facsimile. The Escrow Agent shall retain the Annual Fee as further partial payment for its Services under this Agreement.

(f) Release of Subsequent Payments to Seller. Within ten (10) business days following receipt of any Payment, the Escrow Agent shall remit the Payment to an account designated by Seller.

(g) Default. In the event any Payment or Annual Fee is not received by the Escrow Agent by 11:59 p.m. PT on December 31 of the year in which the Payment or Annual Fee is due (i) this Agreement will terminate and the Escrow Agent will have no further obligations to Buyer or Seller; (ii) the Escrow Agent shall transfer the Domain Name to Seller; and (iii) the Escrow Agent may keep all escrow fees paid prior to termination.

(h) Transfer of Escrow Registration Account to Buyer. Upon payment of the balance of the Purchase Price (which may be paid in full by Buyer at any time) and any applicable Annual Fees incurred through the date of the payment, (i) the Escrow Agent shall change the contact email address for the Domain Name to the email address of Buyer, (ii) the Escrow Agent shall provide Buyer with the username and password to the Escrow Registration Account, (iii) Buyer shall assume all payment obligations with respect to the account, and (iv) this Agreement will terminate and the Escrow Agent shall have no further obligations to Buyer or Seller.

(i) Domain Privacy. At any time following transfer of the Domain Name to the Escrow Registration Account, Buyer may instruct the Escrow Agent to procure domain privacy services for the Domain Name as are generally available from the Registrar, which the Escrow Agent shall procure at Escrow Agent’s Expense.

2. Truth of Statements. The parties agree that the use of the Services is subject to all applicable local, state, federal, and international laws and regulations. Users agree to provide true and accurate information about themselves and any other information required with regard to the transaction contemplated by this Agreement. No User will use or submit any inaccurate or false information or otherwise impersonate any person or entity or user name or alias that they are not authorized to use.

3. Limitation of Liability.

(a) This Agreement sets forth all matters pertinent to the escrow contemplated by this Agreement and no additional obligations of the Escrow Agent will be implied from the terms of this Agreement or any other agreement. The duties of the Escrow Agent under this Agreement will be entirely administrative and will only be as specifically provided in this Agreement. Accordingly, the Escrow Agent, including its members, associates, officers, directors, employees, and agents, shall:

(i) not be liable for any error of judgment or for any other act done or step taken or omitted by it in good faith, except for any acts, steps, or omissions resulting from or involving its own gross negligence, bad faith, or willful misconduct or that constitute a breach of this Agreement;

(ii) be fully protected in acting in accordance with any notice received by it as provided in this Agreement;

(iii) have no responsibility to inquire into or determine the genuineness, authenticity, or sufficiency of any security, check, or other document or instrument submitted to it in connection with its duties under this Agreement;

(iv) be entitled to deem the signatories of any document or instrument submitted to it under this Agreement as being those purported to be authorized to sign the document or instrument on behalf of Buyer and Seller and shall be entitled to rely upon the genuineness of the signatures of the signatories without inquiry and without requiring substantiating evidence of any kind;

(v) be entitled, but not required, to refrain from taking any action contemplated by this Agreement in the event that it becomes aware of any disagreement between Buyer and Seller as to any facts or as to the happening of any contemplated event precedent to the action;

(vi) be permitted, in the event any dispute arises between Buyer and Seller with respect to the disposition of the Domain Name, the Registration Account, or any other subject matter of this Agreement, to (1) file for an interpleader action in a court of competent jurisdiction; (2) deposit with the clerk of the court the username and password for the Escrow Registration Account; and (3) terminate the Services and thereafter be fully relieved from any and all liability or obligation with respect to the Escrow Registration Account, in which case Escrow Agent will have no further obligation to either Seller or Buyer;

(vii) not be responsible for, nor chargeable with knowledge of, the terms and conditions of the Purchase Agreement or any other agreement, instrument, or document between Buyer and Seller and shall be required to act only pursuant to the terms and provisions of this Agreement.

(b) The Escrow Agent is jointly and severally indemnified by Buyer and Seller from all losses, costs, and expenses, including reasonable attorney fees, that may be incurred by it as a result of its involvement in any litigation or other dispute arising from the performance of its duties under this Agreement, provided that the litigation will not have resulted from any action taken or omitted by it and that will have been adjudged to constitute its bad faith, willful misconduct, or gross negligence and the indemnification will survive the termination of this Agreement and the resignation or removal of the Escrow Agent.

(c) Escrow Agent may act in reliance upon any instruction, instrument, or signature reasonably believed by Escrow Agent to be genuine. Escrow Agent may assume that any counsel of any of the Users who gives any notice, request, or instruction has the authority to do so. Escrow Agent shall not be responsible for failure to act or for events or results that occur as a result of causes beyond the reasonable control of Escrow Agent.

(c) No advice or information, whether oral or written, obtained by Users from Escrow Agent or through the Services, will create any warranty or representation by Escrow Agent not expressly made in this Agreement. Escrow Agent expressly disclaims all warranties of any kind, whether express or implied, including, but not limited to, implied warranties of merchantability, fitness for a particular purpose, or non-infringement.

(d) Buyer acknowledges and agrees that (i) Escrow Agent is legal counsel to Seller, (ii) Escrow Agent shall not be deemed to be in violation of any of its obligations under this Agreement by reason of Escrow Agent acting as legal counsel to Seller, and (iii) Buyer waives any conflict of interest of Escrow Agent arising from also being legal counsel to Seller.

(e) Seller waives any conflict of interest of the Escrow Agent that arises out of, or relates to, the Escrow Agent’s good-faith performance under this Agreement.

4. Resignation or Removal. The Escrow Agent may resign as the escrow agent following the giving of thirty (30) calendar days’ prior written notice to Buyer and Seller. The Escrow Agent may be removed and replaced following the giving of thirty (30) calendar days’ prior written notice to the Escrow Agent by Buyer and Seller. In the event the Escrow Agent resigns or is removed or replaced, pursuant to this Section 4, (a) the duties of the Escrow Agent will terminate thirty (30) calendar days after the date of the applicable written notice (or as of a mutually agreed upon earlier date) and (b) the Escrow Agent shall transfer the Escrow Registration Account to a successor escrow agent as appointed by Buyer and Seller. If Buyer and Seller fails to make an appointment of a successor escrow agent, the Escrow Agent may file an interpleader action as contemplated by Section 3(a)(vi). Upon acknowledgment by a successor escrow agent of the receipt of the username and password to the Escrow Registration Account, the Escrow Agent shall be fully released and relieved of all duties, responsibilities, and obligations under this Agreement, except for any liability with respect to any previous acts, steps, or omissions resulting from or involving its own gross negligence, bad faith, or willful misconduct.

5. Notices. Buyer shall promptly inform Escrow Agent of any change of address, telephone number, or fax number, and Escrow Agent shall update the Escrow Registration Account accordingly. All notices, copies, and other communications required or permitted under this Agreement must be in writing and delivered by a nationally recognized overnight courier, signature required, with the notice to be effective on the date of delivery according to the records of the courier.

Addresses for Notice:

|  |  |  |
| --- | --- | --- |
| Party | Address | With Copy To: |
| Buyer | [ADDRESS][CITY, STATE ZIP]Attention: [NAME]Phone No.: [(XXX) XXX-XXXX)]Fax No.: [(XXX) XXX-XXXX)]Email: [EMAIL ADDRESS] |  |
| Seller | [ADDRESS][CITY, STATE ZIP]Attention: [NAME]Phone No.: [(XXX) XXX-XXXX)]Fax No.: [(XXX) XXX-XXXX)]Email: [EMAIL ADDRESS] |  |
| Escrow Agent | [ADDRESS][CITY, STATE ZIP]Attention: [NAME]Phone No.: [(XXX) XXX-XXXX)]Fax No.: [(XXX) XXX-XXXX)]Email: [EMAIL ADDRESS] |  |

The addresses indicated for any party may be changed by similar written notice.

6. General.

(a) This Agreement is personal to Users, and no party may assign or transfer this Agreement or any right, interest, or obligation under this Agreement without the prior express written consent of the Escrow Agent and the Users.

(b) The provisions of this Agreement may be waived, altered, amended, or supplemented only by a writing signed by the Escrow Agent and the Users.

(c) This Agreement will be governed by and construed under the laws of the State of [STATE], excluding its conflict of law provisions. The parties consent to the exclusive jurisdiction of, and venue in, the courts of the State of [STATE] and the federal courts situated therein in connection with any action arising from or in connection with this Agreement. If any provision of this Agreement is void or contrary to law, the provision will be construed as nearly as possible to reflect the intentions of the party with the other provisions remaining in full force and effect.

(d) Any other provision of this Agreement to the contrary notwithstanding, Buyer and Seller may provide a joint notice to the Escrow Agent, directing the Escrow Agent to perform any action contemplated by this Agreement, and, upon receipt of the joint notice, the Escrow Agent shall act in compliance with the joint notice and be protected by this Agreement.

(e) This Agreement and any joint notice may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same agreement. One or more counterparts of this Agreement may be delivered by facsimile or email, with the intention that the delivery will have the same force and effect as delivery of an original counterpart.

(f) If any provision of this Agreement is determined to be prohibited or unenforceable by reason of any applicable law of a jurisdiction, then the provision will, as to that jurisdiction, be ineffective to the extent of the prohibition or unenforceability without invalidating the remaining provisions in this Agreement. Additionally, any prohibition or unenforceability of a provision in a jurisdiction will not invalidate or render unenforceable the provision in any other jurisdiction.

(g) Users authorize the Escrow Agent to disclose information with respect to this Agreement and the Escrow Registration Account established, the parties, or any transaction contemplated by this Agreement if the disclosure is: (i) necessary or desirable, in the Escrow Agent’s opinion, for the purpose of allowing the Escrow Agent to perform its duties and to exercise its powers and rights under this Agreement; (ii) to a proposed assignee of the rights of Escrow Agent; (iii) to a branch, affiliate, subsidiary, employee, or agent of the Escrow Agent or to their auditors, regulators, or legal advisers or to any competent court; (iv) to the auditors of any of the parties; or (v) permitted or required by applicable law, regardless of whether the disclosure is made in the country in which each Party resides, in which the Escrow Account is maintained, or in which the transaction is conducted. The parties agree that any permitted disclosure by the Escrow Agent and its affiliates may be transmitted across national boundaries and through networks, including those owned by third parties.

|  |  |
| --- | --- |
| SELLER: | BUYER: |
| By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| ESCROW AGENT: |
| By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |