

SOURCE CODE ESCROW AGREEMENT

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This Source Code Escrow Agreement (this "**Agreement**") is entered into as of [EFFECTIVE DATE] (the "**Effective Date**") by and among:

[DEVELOPER LEGAL NAME], a [STATE] [ENTITY TYPE, e.g. limited liability company] with its principal place of business at [DEVELOPER ADDRESS] (the "**Developer**");

[BENEFICIARY LEGAL NAME], a [STATE] [ENTITY TYPE] with its principal place of business at [BENEFICIARY ADDRESS] (the "**Beneficiary**"); and

[ESCROW AGENT LEGAL NAME], a [STATE] [ENTITY TYPE] with its principal place of business at [ESCROW AGENT ADDRESS] (the "**Escrow Agent**").

Developer, Beneficiary, and Escrow Agent are each a "**Party**" and together the "**Parties**."

Recitals. Developer licenses to Beneficiary certain software in object-code form under a separate license or services agreement (the "**License Agreement**"). Because Beneficiary depends on the software, Beneficiary wishes to ensure access to the source code and related materials if Developer can no longer support the software. Developer is willing to deposit those materials with the Escrow Agent, to be released to Beneficiary only on the conditions below. In consideration of the mutual promises below, the Parties agree as follows.

1. Definitions

1.1 Deposit Materials. "**Deposit Materials**" means the source code, build scripts, configuration files, documentation, tools, and other materials described in **Schedule 1** that are reasonably necessary to build, maintain, and support the software identified there (the "**Software**").

1.2 Release Conditions. "**Release Conditions**" means the events listed in Section 5.1 that entitle Beneficiary to release of the Deposit Materials.

1.3 Escrow Account. "**Escrow Account**" means the secure facility, electronic or physical, in which the Escrow Agent holds the Deposit Materials.

2. Deposit of Materials

2.1 Initial deposit. Within [NUMBER, e.g. 30] days after the Effective Date, Developer will deposit a complete copy of the Deposit Materials with the Escrow Agent.

2.2 Updated deposits. Developer will deposit updated Deposit Materials within [NUMBER, e.g. 30] days after each [MAJOR RELEASE / QUARTER / MILESTONE] so that the Escrow Account reflects the version of the Software then in use by Beneficiary.

2.3 Identification. Each deposit will be accompanied by a written description identifying the Software version, the contents, and any media or access credentials, which the Escrow Agent will log.

2.4 Representation. Developer represents that each deposit is complete and accurate and is sufficient to allow a reasonably skilled programmer to build, maintain, and support the corresponding version of the Software.

3. Escrow Agent Duties

3.1 Custody. The Escrow Agent will hold the Deposit Materials in the Escrow Account, using reasonable care and security measures at least equal to those it uses for its own confidential materials of similar sensitivity.

3.2 Acknowledgment. The Escrow Agent will acknowledge receipt of each deposit to Developer and Beneficiary but is not obligated to verify the contents, completeness, or functionality of the Deposit Materials unless a verification service is ordered under Section 4.

3.3 No use. The Escrow Agent will not use, copy, disclose, or access the Deposit Materials except as necessary to perform its duties under this Agreement.

3.4 Records. The Escrow Agent will keep records of deposits, releases, and material communications and will make those records available to Developer and Beneficiary on reasonable request.

4. Verification

4.1 Right to verify. On Beneficiary's written request and at Beneficiary's expense, the Parties may arrange verification of the Deposit Materials to confirm they are complete and can be used to build the Software.

4.2 Conduct. Verification will be conducted under reasonable confidentiality protections. Developer may participate, and the verifier will not retain or disclose the Deposit Materials beyond what the verification requires.

5. Release Conditions and Procedure

5.1 Release Conditions. The Escrow Agent will release the Deposit Materials to Beneficiary on the occurrence of any of the following, subject to the procedure in Section 5.2: (a) Developer's bankruptcy, insolvency, dissolution, or ceasing to do business, except as part of a solvent reorganization where the successor assumes Developer's obligations; (b) Developer's material, uncured breach of its maintenance or support obligations under the License Agreement; or (c) any other event the Parties specify in Schedule 1.

5.2 Release procedure. To obtain release, Beneficiary will deliver a written notice to the Escrow Agent and Developer affirming that a Release Condition has occurred and describing it. The Escrow Agent will give Developer the notice and a period of **[NUMBER, e.g. 10]** business days to object in writing. If Developer does not object within that period, the Escrow Agent will release the Deposit Materials to Beneficiary.

5.3 Disputed release. If Developer objects, the Escrow Agent will not release the Deposit Materials except on (a) joint written instruction of Developer and Beneficiary, (b) an order of a court or arbitrator, or (c) resolution of the dispute under Section 8. The Escrow Agent may continue to hold the Deposit Materials pending resolution.

6. License on Release

6.1 License grant. On a valid release, Developer grants Beneficiary a non-exclusive, non-transferable license to use, copy, and modify the released Deposit Materials solely to maintain and support Beneficiary's licensed use of the Software, and not to distribute, sublicense, or commercialize the Software except as the License Agreement permits.

6.2 Confidentiality survives. The released Deposit Materials remain Developer's confidential information and trade secrets. Beneficiary will protect them and use them only as permitted by Section 6.1.

7. Confidentiality

7.1 Mutual confidentiality. Each Party will keep confidential the non-public information of the others learned under this Agreement, including the existence and contents of the Deposit Materials, and will use it only to perform under this Agreement.

7.2 Compelled disclosure. A Party may disclose Confidential Information to the extent required by law or court order, provided it gives prompt notice where legally permitted and reasonable cooperation to seek protective treatment.

8. Fees, Liability, and Dispute Resolution

8.1 Fees. Beneficiary will pay the Escrow Agent's fees as stated in Schedule 1, unless the Parties agree another allocation. Non-payment may suspend the Escrow Agent's duties but does not authorize release of the Deposit Materials to anyone.

8.2 Escrow Agent liability. The Escrow Agent's liability is limited as stated in Schedule 1 and excludes indirect and consequential damages, except for the Escrow Agent's gross negligence or willful misconduct. The Escrow Agent may rely on instructions and notices it reasonably believes genuine.

8.3 Indemnity of Escrow Agent. Developer and Beneficiary will jointly and severally indemnify the Escrow Agent against claims and costs arising from its proper performance, except those caused by the Escrow Agent's gross negligence or willful misconduct.

8.4 Dispute resolution. The Parties will first attempt in good faith to resolve any dispute through discussion within **[NUMBER, e.g. 30]** days of written notice. **[OPTIONAL: arbitration clause — discuss with counsel.]**

9. Term and General Provisions

9.1 Term. This Agreement continues until terminated by the joint written agreement of Developer and Beneficiary, on termination of the License Agreement, or as Schedule 1 provides. The Escrow Agent may resign on **[NUMBER, e.g. 60]** days' written notice, after which the Parties will appoint a successor and the Deposit Materials will be transferred to it.

9.2 Effect of termination. On termination, and absent a pending release, the Escrow Agent will return or destroy the Deposit Materials as Developer directs.

9.3 Governing law and venue. This Agreement is governed by the laws of the State of **[STATE]**, without regard to its conflict-of-laws rules, and the Parties submit to the exclusive jurisdiction of the state and federal courts located in **[COUNTY, STATE]**.

9.4 Entire agreement; amendment. This Agreement, with its Schedules, is the entire agreement on its subject and may be amended only by a writing signed by all Parties.

9.5 Severability and waiver. If any provision is unenforceable, the rest remains in effect. A Party's failure to enforce a provision is not a waiver.

9.6 Counterparts and electronic signature. This Agreement may be signed in counterparts and by electronic signature, each of which is an original and all of which together form one agreement.

Schedule 1 — Deposit Materials, Release Conditions, and Fees. Software and versions: **[DESCRIBE]**. Deposit Materials: **[LIST]**. Deposit schedule: **[DESCRIBE]**. Additional Release Conditions: **[DESCRIBE]**. Escrow Agent fees: **[DESCRIBE]**. Escrow Agent liability cap: **[AMOUNT]**.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

DEVELOPER	BENEFICIARY	ESCROW AGENT
Signature: _____	Signature: _____	Signature: _____
Printed name: [NAME]	Printed name: [NAME]	Printed name: [NAME]
Title: [TITLE]	Title: [TITLE]	Title: [TITLE]
Date: _____	Date: _____	Date: _____

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