

THE TECH CONTRACTS HANDBOOK

Software Licenses and Technology Services Agreements for Lawyers and Businesspeople

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(ABA Publishing 2010)

www.TechContractsHandbook.com

Contract Clause

Technology Escrow

You may use the contract clause below, subject to the "Terms of Use" found at <http://www.techcontractshandbook.com/html/disclaimer.html>. In addition to the Terms of Use, PLEASE READ THE FOLLOWING DISCLAIMER BEFORE USING THE CLAUSE:

The contract clause below is general in nature and may not be sufficient for a specific contractual, technological, or legal problem or dispute. THE CLAUSE IS NOT PROVIDED WITH ANY GUARANTY, WARRANTY, OR REPRESENTATION AS TO QUALITY OR SUITABILITY FOR ANY PARTICULAR PURPOSE. Publication of the clause does not constitute the practice of law and is not legal counsel or advice. Neither the author nor the publisher of The Tech Contracts Handbook, nor anyone affiliated with the book's Website, is rendering a legal or other professional service. The clause should not be relied upon as a substitute for consultation with an experienced attorney.

- (a) *Escrow Agreement.* Concurrent with execution of this Agreement, the parties will execute a third party escrow agreement in the form attached hereto as Attachment ____ ("the Escrow Agreement"), in conjunction with _____ (the "Escrow Agent").
- (b) *Deposit.* Within ____ business days of the Effective Date, Provider will deposit with the Escrow Agent, pursuant to the procedures of the Escrow Agreement, the source code for the Software, as well as the Documentation and names and contact information for each programmer involved in creation of the Software. Promptly after release of any update, upgrade, patch, bug-fix, enhancement, new version, or other revision to the Software, Provider will deposit updated source code, documentation, names, and contact information with the Escrow Agent. ("Deposit Material" refers to

material required to be deposited pursuant to this Subsection ____(b).)

- (c) *Verification.* At Recipient's request and expense, the Escrow Agent may at any time verify the Deposit Material, including without limitation by compiling source code, running tests to compare it to the Software, and reviewing the completeness and accuracy of any and all material. In the event that the Escrow Agent informs the parties that the Deposit Material does not conform to the requirements of Subsection ____(b) above: (i) Provider will promptly deposit conforming Deposit Material; and (ii) Provider will reimburse Recipient for subsequent verification of the new Deposit Material (except to the extent that subsequent verification exceeds the cost of the unsuccessful verification by more than __%). Any breach of the provisions of Subsection ____(c)(i) above will constitute material breach of this Agreement, and no further payments will be due from Recipient until such breach is cured, in addition to such other remedies as Recipient may have.
- (d) *License & Use.* Provider hereby grants Recipient a license to use, reproduce, and create derivative works from the Deposit Material, provided Recipient may not distribute or sublicense the Deposit Material or make any use of it whatsoever except for such internal use as is necessary to maintain and support the Software. Copies of the Deposit Material created or transferred pursuant to this Agreement are licensed, not sold, and Recipient receives no title to or ownership of any copy or of the Deposit Material itself. The Deposit Material constitutes Confidential Information of Provider pursuant to Section __ (Nondisclosure) of this Agreement (provided no provision of Section __ calling for return of Confidential Information before termination of this Agreement will apply to the Deposit Material).
- (e) *Release Conditions.* The term "Release Conditions," as used in the Escrow Agreement, refers to any of the following: (i) material breach by Provider of Subsection ____(b) (*Maintenance*) of this Agreement, if such breach remains uncured ____ or more days after Recipient's written notice; (ii) any failure of Provider to function as a going concern; (iii) appointment, application for, or consent to a receiver, trustee, or other custodian for Provider or its assets; (iv) Provider becomes insolvent or unable to pay its debts as they mature in the ordinary course or makes an assignment for the benefit of creditors; or (v) Provider is liquidated or dissolved, or any proceedings are commenced with regard to Provider under any bankruptcy, insolvency, or debtor's relief law.