

SOURCEHARBOR SOURCEPRO ESCROW AGREEMENT

Agreement Number: 154

This SOURCEHARBOR SOURCEPRO ESCROW AGREEMENT (the "SourcePro Agreement" or "Agreement") is made and entered into as of this 9th day of November, 2004 by and among Source Harbor, Inc., a South Carolina corporation, located at 33 Office Park Road, Suite A-310, Hilton Head Island, SC 29928 ("SourceHarbor") and Tsunami Software, Inc., a Delaware corporation, the licensor of certain technology located at 200 Portage Avenue, Palo Alto, CA 94306 ("Licensor") and any additional parties acceding to this Agreement by signature in the Licensee Registration Form (each a "Licensee") who hereinafter in this Agreement may collectively be referred to as the "Parties" and individually as a "Party".

Recitals

WHEREAS, Licensor and Licensee(s) have entered or intend to enter into a development agreement, license agreement or other agreement pertaining to the purchase, license, or development of the Licensor's software or other proprietary technology (hereinafter such agreement shall be referred to as the "License Agreement").

WHEREAS, the electronic and technical information comprising or describing the software including source code, documentation, related software and any development environments (hereinafter referred to as the "Software") is intellectual property and a trade secret of the Licensor and Licensor strives to avoid disclosure of its proprietary technology.

WHEREAS, it may become necessary under certain circumstances for the Licensee to gain access to parts of the Software, notably the source code and documentation; and

WHEREAS, the Parties have therefore decided to enter this Agreement as a supplement to the License Agreement pursuant to Title 11 of the U.S. Code, Section 365 (n), where SourceHarbor provides to the Licensor and Licensee services in the context of the deposit of the Software that are detailed in this Agreement and grants Licensee access to the material deposited by Licensor (hereinafter referred to as the "Escrow Deposit") in case one of the Release Events, as defined in Section 3 below, set forth in this Agreement is met.

NOW, THEREFORE, in consideration of the relationship of the Parties as set forth above and the mutual covenants and agreements set forth herein, the Parties agree to enter into this Agreement and agree to the following:

Section 1: Deposits

1.1 Delivery of Escrow Deposit: Licensor agrees to deliver the Escrow Deposit described in Attachment A to SourceHarbor and to grant to SourceHarbor the right to transfer the Escrow Deposit and other electronic information and data as allowed under this Agreement. Licensor ensures that the contents are readable either by man or machine and contain no viruses. Licensor agrees to conspicuously label each item of tangible media in the Escrow Deposit for identification.

1.2 Escrow Deposit Updates: Licensor agrees to deliver updates to the Escrow Deposit as follows:

☒ Annually

Upon receipt of updated Escrow Deposits by SourceHarbor, said updates will be added to the initial Escrow Deposit. SourceHarbor will handle the administration and labeling of additional updates of the Escrow Deposit and will document them appropriately.

1.3 Escrow Deposit Inspection: Immediately following the arrival of the Escrow Deposit at SourceHarbor, SourceHarbor will undertake an inventory review of the Escrow Deposit. This inventory review includes verifying the completeness of the Escrow Deposit by means of comparison with the list of the materials detailed in the Licensor completed portion of Attachment B ("Escrow Deposit Inventory List"), the Escrow Deposit contents, and any packing list which may have been included in the Escrow Deposit. SourceHarbor will then note any discrepancies of the Escrow Deposit in Attachment B and sign off on Attachment B forwarding it with the escrow deposit notification to the Parties. Should SourceHarbor determine that the Escrow Deposit does not conform to the Escrow Deposit Inventory List, SourceHarbor will a) request Licensor to complete the Escrow Deposit without delay and b) inform Licensee accordingly. Licensor is then obligated to complete the Escrow Deposit within fifteen (15) calendar days after such notification.

1.4 Escrow Deposit Notification: After SourceHarbor has completed the inspection process, SourceHarbor will place the Escrow Deposit in storage.

Section 2: Escrow Account Notifications

2.1 Registration: Licensor may at any point inform SourceHarbor about an additional beneficiary (Licensee) to be added to this contract. The registration of a new Licensee takes effect by means of all parties signing Attachment E, the Licensee Registration Form ("Attachment E").

2.2 Status Statements: SourceHarbor will provide the Parties a semi-annual "Status Statement" profiling the history of the account.

2.3 Account Notifications: Unless otherwise stated in this Agreement, all notifications under this Agreement will be delivered by both:

☐ E-mail, and

☒ First Class mail.

If no selection is made, notifications will be sent by E-mail. All notifications, invoices, etc. will be delivered to the contact person of Licensor at the addresses stated in Attachment C ("Data Sheet for Licensor") of this Agreement, and to the contact person of Licensee at the addresses stated in Attachment E ("Licensee Registration Form" of this Agreement. It is Licensor's responsibility to update the other Parties whenever the information stated in Attachment C changes, and it is each Licensee's responsibility to update Parties whenever the information stated in Attachment E changes. In order to speed delivery of a notification, it may also be sent by fax or by secure and signed electronic mail in advance.

Section 3: Release of Escrow Deposit

3.1 Release Event: "Release Events" are defined by and are present when one of the following requirements is met:

- a. Licensor files a voluntary petition in bankruptcy or for a reorganization or to effect a plan or other arrangement with its creditors, files an answer to a creditor's petition or other petition against it for an adjudication in bankruptcy or for a reorganization admitting the material allegations thereof, or applies for or permits the appointment of a receiver, trustee or custodian for any

substantial portion of its properties or assets, and such petition or proceeding is not dismissed within sixty (60) days of the filing or initiation thereof; or

b. Joint written instructions from Licensor and Licensee.

3.2 Filing for Release of the Escrow Deposit: If Licensee in its judgment believes the Release Event defined above in Section 3.1 has occurred; Licensee shall provide SourceHarbor with written notice of the occurrence of such event in writing and request release of the Escrow Deposit. SourceHarbor will send a notice to Licensor by commercial express courier that Licensee has filed for release.

3.3 Dispute Directives: From the date SourceHarbor mails the notice requesting release of the Escrow Deposit, Licensor shall have sixty (60) business days to deliver "Dispute Directives" to SourceHarbor. "Dispute Directives" shall mean any notification to SourceHarbor from Licensor that Licensor disputes the assertion by Licensee that a Release Event has occurred and thus Licensor directs SourceHarbor not to release the Escrow Deposit to Licensee. Upon receipt of Dispute Directives from Licensor within the prescribed period of time, SourceHarbor will notify the Parties with all relevant documents attached that there is a disagreement as to whether a Release Event is present. SourceHarbor will advise the Parties that a release will occur only if a) the Parties mutually direct the release; b) the presence of a Release Event is determined by arbitration, or c) an order from a court of competent jurisdiction directing SourceHarbor to release the Escrow Deposit.

3.4 Release of Escrow Deposit: In the event SourceHarbor does not receive any Dispute Directives from the Licensor within sixty (60) business days, and only if a) the presence of a Release Event is determined by arbitration, or b) SourceHarbor receives an order from a court of competent jurisdiction directing SourceHarbor to release the Escrow Deposit, then SourceHarbor will release the Escrow Deposit to Licensee. Should the Parties jointly direct SourceHarbor or should Licensor direct SourceHarbor to release the Escrow Deposit, SourceHarbor will release the Escrow Deposit to Licensee accordingly. If the Parties jointly notify SourceHarbor that the release procedure has ended without release or if a court or an arbitral award determines the lack of a Release Event, SourceHarbor will continue to store the Escrow Deposit as set forth in this Agreement. SourceHarbor has the right to demand payment of the costs incurred by the release procedure.

3.5 Right to Use Escrow Deposit: Unless otherwise provided by the License Agreement, Licensee shall have the right to use the Escrow Deposit for the sole purpose of continuing the benefits afforded to Licensee as stated in the Tsunami Appliance Terms agreement. SourceHarbor and Licensee expressly acknowledge that the Escrow Deposit may contain trade secrets of Licensor and that Licensor owns all rights (e.g. copyrights, rights of disposition and ownership) to the Escrow Deposit. The Escrow Deposit is provided to the Parties only in strict confidence subject to the conditions of and in the context of this Agreement. SourceHarbor and Licensee shall preserve the trade secrets contained in the Escrow Deposit throughout the duration of as well as after termination of this Agreement, unless otherwise expressly agreed upon between the Parties.

Section 4: Licensor Representations

During the term of this Agreement, Licensor a) declares and ensures that the following Escrow Deposit is Licensor's physical or intellectual property and that Licensor possesses all rights to this material necessary for fulfillment of its obligations under this Agreement, including the right to make copies, to distribute and to use the Escrow Deposit and b) grants to SourceHarbor the non-exclusive, non-transferable right, unlimited in scope, but limited in time to the duration of this Agreement, to make use of the media and/or materials that are part of the Escrow Deposit in the context of this Agreement, in particular to transfer the Escrow Deposit to Licensee in the occurrence of a Release Event, to copy the

Escrow Deposit and to take other actions of a real or legal kind with regard to the Escrow Deposit as are necessary or sensible to the fulfillment of the obligations of SourceHarbor as described in this Agreement.

Section 5: Fees

5.1 Paying Party: The costs of services provided by SourceHarbor in the context of this Agreement will be paid as follows:

☒ 100% Paid by Licenser

☐ Initiation fee and annual maintenance fee paid by Licenser; registration fee paid by each Licensee

☐ Other (Specify) _____

If no selection is made, Licenser will bear 100% of the costs of this Agreement.

5.2 Payment Terms: Licenser or Licensee each has the right, on behalf of the other Party, to make payment to SourceHarbor for the cost incurred, so to relieve a debt. SourceHarbor shall not be required to perform any service under this Agreement unless the payment for such service and any outstanding balances owed to SourceHarbor are paid in full. Fees are due within thirty (30) days of receipt of invoice. The fees for services rendered by SourceHarbor on the basis of this Agreement are calculated according to the SourceHarbor fee schedule in effect at that time.

Section 6: Confidentiality

Except as provided in this Agreement, SourceHarbor shall not disclose, copy, make available, release or use the Escrow Deposit. Should Licensee receive the Escrow Deposit under this Agreement, Licensee shall not disclose the Escrow Deposit to any third party. If SourceHarbor receives a subpoena or any other order from a court or other government agency of competent jurisdiction related to the Escrow Deposit, SourceHarbor shall promptly provide the Parties with a copy of such subpoena or order. SourceHarbor shall have no obligation whatsoever to challenge any such subpoena or order and shall have no liability to any Party related to SourceHarbor's compliance with any subpoena, order or instruction from a court or other government agency.

Section 7: Inception and Term

This Agreement commences upon the date entered at the beginning of this Agreement. This Agreement is initially in effect for one (1) year after the date of commencement. Afterwards its term is automatically renewed for successive one year terms, unless SourceHarbor or Licenser object by written notification to the Parties within ninety (90) days prior to the end of the initial term or ninety (90) days prior to the end of any subsequent one-year term. In regard to the licensee registration, for each licensee the Agreement will terminate automatically after three (3) one-year terms, unless the Licensee and the Licenser mutually agree, by written notification to SourceHarbor and Licenser within ninety (90) days prior to the end of the initial term or ninety (90) days prior to the end of any subsequent one-year term, to extend the Agreement for additional one-year terms.

Section 8: Consequences of Termination

8.1 Termination Due to Release: Upon release of the Escrow Deposit, this Agreement terminates automatically as it is associated with the Licenser and respective Licensee implicated in the release, unless the Parties agree otherwise.

8.2 Termination Due to Non-Payment: In the event of non-payment of any invoice when due, SourceHarbor will notify the Licenser and affected Licensee(s) of such delinquency. Any Party to this Agreement has the right to make payment to cure such default. If the past due fees are not received

within thirty (30) days of such notification, SourceHarbor has the right to terminate this Agreement amongst the affected Parties at any time with immediate effect.

8.3 Disposition of Escrow Deposit: In case of a termination of this Agreement for any reason - except through a release procedure - Licensor must within fifteen (15) calendar days from the termination notice issue SourceHarbor written directions as to the handling of the Escrow Deposit. SourceHarbor will follow those directions once all invoices are paid in full. SourceHarbor is not obliged or responsible to destroy or return the Escrow Deposit if the Escrow Deposit is needed for the fulfillment of another continuing escrow agreement between SourceHarbor and Licensor. In the event of Non-Payment, SourceHarbor has the right to destroy the Escrow Deposit.

8.4 Right to Destroy: If a direction is not issued within the limited time period mentioned in Section 8.3, then SourceHarbor will destroy or delete the Escrow Deposit.

8.5 Survival of Terms Following Termination: The following provisions of this Agreement shall survive upon termination: a) Representations of Licensor, b) any rights granted to any of the Parties under a Release Event that occurred prior to Termination, c) the obligation to pay fees, d) the provisions of Section 9, Section 10, and Section 11.2 and any provisions in this Agreement that specifically state they survive the termination of this Agreement. The termination of this Agreement as it relates specifically to any one Licensee registrant shall have no impact on the term of escrow arrangements among SourceHarbor, Licensor and other Licensee registrants party to this Agreement.

8.6 Successors: This Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties. SourceHarbor must be provided clear instructions regarding any successors and assigns of Licensee or Licensor.

Section 9: Arbitration

9.1 Arbitration: All legal action (including any provisional and protective measures) or claims, which arise out of or in connection with this Agreement, its attachments and all subsequent amendments, including but not limited to disputes over the conclusion of this Agreement, its validity, binding effect, interpretation, fulfillment, presence of a Release Event and the associated obligation to consent of Licensor to release to Licensee pursuant to Section 3, violation of this Agreement or cancellation and non-contractual claims, will be decided through binding arbitration pursuant to the expedited procedures under the Commercial Rules of the American Arbitration Association. Arbitration settlements may include recovery by the Licensor of Arbitration fees and legal fees for advice on Arbitration.

9.2 Arbitration Process: The arbitrator(s) must commence the arbitral procedure immediately after the initiation of the arbitration and must issue and send the orders regulating the procedure to the Parties. Within a limitation period to be determined by the arbitrator(s), the claimant must state its claim and the supporting facts. Also within a limitation period to be determined by the arbitrator(s), the respondent must respond. These limitation periods should not ordinarily be longer than one week each, but may be as short as two (2) days or as long as four (4) weeks. The location of any arbitration procedure pursuant to this Agreement shall be Santa Clara County, California.

Section 10: Liability

Licensor and Licensee each agree to indemnify, defend and hold harmless SourceHarbor from any and all claims, damages, actions, arbitration fees and expenses, attorney's fees, costs and other liabilities incurred by SourceHarbor relating in any way to this Agreement, except where it is adjudged that SourceHarbor acted with gross negligence or willful misconduct.

Section 11: Miscellaneous

11.1 Notices: All limitation periods mentioned in this Agreement will commence with the date the relevant notification is sent. The parties shall have the right to rely on the last known address of the other parties as defined in Attachment C and Attachment E. Any correctly addressed notice or last known address of the other parties that is relied on herein that is refused, unclaimed or undeliverable because of an act or omission of the party to be notified as provided herein shall be deemed effective as of the first date that said notice was refused, unclaimed or deemed undeliverable by the postal authorities by First Class mail, courier or commercial express courier. Notifications with regard to Section 3.3 and Section 8 must be received by SourceHarbor within the set limitation period.

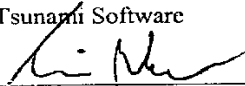
11.2 Controlling Law: This Agreement is governed by the laws of the State of California, without regard to its conflict of law provisions. In the event one or more of the provisions of this Agreement becomes invalid, the other provisions remain in force. Any invalid provision is to be replaced with a valid provision, which comes as close as legally possible to the economic effect of the invalid provision.

11.3 Counterparts: This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

11.4 Entire Agreement: This Agreement is the complete and exclusive statement of the agreement between the parties, which supersedes and merges all prior proposals, understandings and all other agreements, oral or written, between the parties relating to the subject matter of this Agreement. The Agreement may not be modified, altered or amended except by written instrument duly executed by all the Parties.

11.5. Read and Understood: Each party acknowledges that it has read and understands this Agreement and agrees to be bound by its terms.

Licensor Tsunami Software

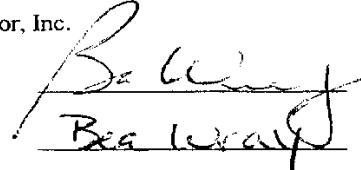
Signed by 

Name Tino Wuensche

Title VP Engineering

Date November 8, 2004

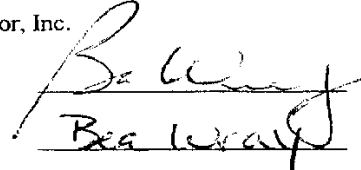
Source Harbor, Inc.

Signed by 

Name

Title

Date


Bea Wang
CEO
11/9/04

Attachment A

Escrow Deposit Description

Licensor represents to Licensee that Licensor shall deposit the following Escrow Deposit materials to SourceHarbor to fulfill the obligation in Section 1 of this Agreement:

Qualitative Description of Escrow Deposit Materials (Product Name, Version, Creation Date):

Relationship Builder, version 2.5, 11-08-2004.

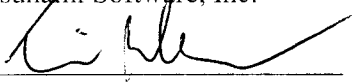
***** (All media must be conspicuously labeled identifying the contents.) *****

The following optional items are recommended to be included in the Escrow Deposit. The suggestions below, however, are not to be construed as legal advice but may be helpful in compiling the deposit materials. Check where applicable:

- ☒ Copy of the source code for software
- ☒ Description of the deposit including full name and version details, media type, backup command/software used, compression used, archive hardware and operating system details.
- ☒ Copy of the Tsunami Appliance Terms

Licensor Tsunami Software, Inc.

Signed by



Name Tino Wuensche

Title VP Engineering

Date November 8, 2004

Attachment C

Data Sheet for Licensor

Notices to Licensor should be sent to:

Company Name	Tsunami Software, Inc.
Address	200 Portage Avenue Palo Alto, CA 94306
Contact	Tino Wuensche
Telephone	650.852.0400
Facsimile	
E-mail	tino@tsunamisoftware.com

Invoices to Licensor should be sent to:

Company Name	Tsunami Software, Inc.
Address	200 Portage Avenue Palo Alto, CA 94306
Contact	Jay Borenstein
Telephone	650.852.0400
Facsimile	
E-mail	_____ jay@tsunamisoftware.com

All notices and communications to SourceHarbor should be sent to:

Source Harbor, Inc.
33 Office Park Road, Suite A-310
Hilton Head Island, SC 29928
Telephone (843) 842-3995
Facsimile (843) 341-5756
contracts@sourceharbor.com

Attachment D Escrow Deposit Account Form

Agreement Number: 156Deposit Account Number: 156-001

Licensor has entered into a SourcePro Escrow Agreement with SourceHarbor. Pursuant to that Agreement, Licensor shall deposit certain Escrow Deposit materials with SourceHarbor. The name of the initial Escrow Deposit Account will be the following:

☒ (check) Initial Escrow Deposit Account Name: Tsunami Relationship Builder 2.5

Should Licensor desire that new Escrow Deposit materials be stored and maintained separately from the initial deposit account, Licensor shall execute an additional Attachment D and check the below line item, "Additional Escrow Deposit Account". SourceHarbor will establish a separate Escrow Deposit account for the new Escrow Deposit materials.

☐ (check) Additional Escrow Deposit Account Name: _____

The terms and conditions of the existing SourcePro agreement will govern the Escrow Deposit accounts of the SourcePro agreement. Termination or expiration of an Escrow Deposit Account will only affect the specific Escrow Deposit Account number identified in the termination request from Licensor.

Licensor Tsunami Software, Inc.

Signed by Tino WuenscheName Tino Wuensche
Title VP Engineering

Date November 8, 2004

Source Harbor, Inc.

Signed by Bea WrayName Bea Wray
Title CEODate 11/9/04