

ESCROW AGREEMENT

SOFTWARE SOURCE CODE

THE UNDERSIGNED,

1. _____,
having its place of business at _____,
for the purposes hereof represented by _____,
hereinafter referred to as "**Licensor**",

2. _____,
having its place of business at _____,
for the purposes hereof represented by _____,
hereinafter referred to as "**Licensee**",

3. Escrow Europe BV,
having its place of business at Veemkade 396 in Amsterdam, the Netherlands,
for the purposes hereof represented by _____,
hereinafter referred to as "**Escrow Europe**",

WHEREAS:

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- I **By** Licence Agreement Licensor granted to Licensee a licence of the program product ("Product") as set out in **Annex I**;

- II **The** source code of the Product and all related technical documentation are the property of Licensor and are of a confidential nature;

- III **The** source code of the Product and the technical documentation relating to it are not required for the general use of the Product under the terms of the Licence Agreement, but are required for a proper understanding, maintenance, amendment and correction of the Product;

- IV **Licensor** acknowledges that Licensee under certain circumstances and exclusively for Continuity Purposes may require access to the source code of the Product and all related technical documentation;

- V **Licensor** agrees to deposit on behalf of Licensee the source code of the Product and related technical documentation with Escrow Europe under the conditions specified herein;

HEREBY AGREE:

1. **DEFINITIONS**

The following expressions used in this escrow agreement and the Annexes shall have the following meaning:

Agreement:

this escrow agreement between Licensor, Licensee and Escrow Europe;

Licence agreement:

the licence agreement between Licensor and Licensee concerning the Product;

Product(s):

the program product(s) as detailed in **Annex I**, licensed to Licensee under the Licence Agreement, which form the subject of the escrow arrangement;

Technical Documentation:

the technical documentation required to enable Licensee to maintain, amend, correct and/or modify the source code of the Product;

Material:

- (I) the source code of the Product;
- (II) all alterations, updates and/or corrections of the Product, which are made available by Licensor to Licensee within the scope of Licensor's release policy;
- (III) all technical documentation, relevant and necessary for the maintenance of the Product;

Medium:

the data carrier(s) containing the Material;

Maintenance Obligations:

the conditions set out in the Licence and/or Maintenance Agreement under which Licensor has agreed to maintain the Product;

Continuity Purposes:

the use of the Material strictly and solely for the purpose of maintenance, correction, modification and/or extension of the Product with due observation of the copyright and confidentiality clauses of the Licence Agreement;

Licensor - _____

Licensee - _____

Escrow Europe - Escrow Europe BV
 Veemkade 396
 1019 HE Amsterdam, the Netherlands

2. DEPOSIT

- 2.1 Within thirty (30) days after the Agreement has come into effect, Licensor shall transfer the ownership of the Medium, containing the Material, to Escrow Europe.
- 2.2 Licensor shall undertake to do the same for each alteration of the Product, within thirty (30) days of having made such alteration available to Licensee within the scope of its release policy. If Licensee does not receive the confirmation of deposit prior to or within thirty (30) days after operational implementation, Licensee shall immediately notify Escrow Europe.
- 2.3 Escrow Europe will confirm the deposit of the Material to Licensee.
- 2.4 Escrow Europe shall hold the two latest deposits of the Material for the term of the Agreement. Older Material (prior to the two latest deposits) shall be destroyed by Escrow Europe unless agreed otherwise in this Agreement.
- 2.5 Escrow Europe shall make no use of the Material other than it is entitled to pursuant to the Agreement.
- 2.6 The transfer of ownership of the Medium referred to under Clause 2.1 and Clause 2.2 above, shall not include a transfer to Escrow Europe of any intellectual property rights in the Material. These intellectual property rights shall at all times remain vested in Licensor or such other third party as may be determined from time-to-time.

2.7 Licensor hereby grants Escrow Europe the rights to:

- make a back-up copy of the Material, when necessary;
- load the Material on a computer system in order to verify the Material;
- release the Material to Licensee in accordance with Article 5 ("Release")

3. BACK-UP

3.1 Licensor shall throughout the term of the Agreement hold available a copy of the Material as a back-up.

4. VERIFICATION

4.1 With each deposit, Licensor shall provide to Escrow Europe an **Escrow Deposit Specification Form**, setting out the details of the Material which is deposited on behalf of Licensee.

Licensor warrants that the Material contains an accurate and complete reflection of the Product licensed by Licensee at the time of deposit.

4.2 Escrow Europe shall execute a level I verification of the Material in order to establish presence and readability of the components as detailed on the Escrow Deposit Specification Form. Escrow Europe shall inform Licensor and Licensee of its findings.

4.3 Licensee shall at any time be entitled to request Escrow Europe for extended verification (Level III-IV). If a verification is requested, Licensor is obliged to cooperate with Escrow Europe in the execution of the verification in as far as reasonably necessary.

4.4 The costs of Escrow Europe, Licensor and Licensee, borne by the additional verification set out under Clause 4.3 above, shall be to the account of Licensee, unless the verification shows that Licensor materially has not met its obligations hereunder, in which case Licensor shall bear the costs.

4.5 If a verification shows that the Material as deposited with Escrow Europe does not contain an accurate and complete reflection of the Product licensed by Licensee at the time of the deposit, then Licensor shall restore the discrepancy within thirty (30) days of the verification.

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5. **RELEASE**

5.1 Provided Licensee has a valid Licence Agreement, Escrow Europe shall be obliged to release the Material to Licensee if:

- Licensors ceases its business undertaking without validly assigning its Maintenance Obligations and its obligations under the Agreement to a competent third party;
- Licensors suffers bankruptcy;
- Licensors does not comply with its Maintenance Obligations and/or its obligations under the Agreement to such an extent that its failure to comply endangers the continuity of use of the licensed Product by Licensee;
- Licensors does not comply with Clause 11.1 or has been subject to a take-over by a third party which does not accept the Maintenance Obligations or offers to accept them only at commercially unreasonable terms.

5.2 If in the opinion of Licensee a circumstance defined under Clause 5.1 above occurs and Licensee requires the release of the Material on the basis thereof, Licensee shall send a notice to this effect by registered letter to Licensors and Escrow Europe and containing within such a notice any reasonable evidence as Licensee may have in its possession to support the opinion.

5.3 Upon receipt of such notice as set out under Clause 5.2 above Escrow Europe shall within seven (7) days serve notice in writing upon Licensors that a request for the release of Material has been received.

Licensors shall have fourteen (14) days from the date of this notice from Escrow Europe to register any objection to such release. If Licensors fails to register an objection or fails to register an objection within the stated fourteen (14) days, Escrow Europe shall be entitled to promptly release the Material to Licensee.

5.4 If within the term set out under Clause 5.3 above Licensors raises a written objection against the release and supports such an objection with reasonable evidence then parties shall submit the question of Licensee's right to such release to the Foundation for the Settlement of Automation Disputes (SGOA – www.sgoa.org), to be resolved in accordance with its rules for summary arbitration proceedings as stated in its Rules of Arbitration. The decision of the SGOA shall be final and binding on all parties and shall not be subject to appeal to a court in legal proceedings.

5.5 If Licensors suffers bankruptcy then Licensors shall have no right of objection under Clause 5.3 above.

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5.6 In case Escrow Europe releases the Material to Licensee pursuant to the provisions in this Article, Licensors grants Licensee the non-exclusive right to use the Material for Continuity Purposes only.

6. WARRANTIES

6.1 Licensors warrants and represents that it is entitled to transfer the Material to Escrow Europe pursuant to the provisions of the Agreement and agrees to indemnify and hold harmless Escrow Europe from and against any claim by a third party in relation to the release of the Material hereunder.

6.2 Licensors warrants to Licensee that the Material as deposited with Escrow Europe is sufficient to enable a qualified person to continue the maintenance of the Product.

6.3 Licensee warrants and represents that it shall exclusively use any Material which is made available under this Agreement for Continuity Purposes only and for the use thereof solely in connection with the internal business of Licensee. Licensee is reminded that certain conditions of the Licence Agreement continue to apply to the use of the Material, including, but not limited to, the conditions of Confidentiality, Limited Right to Copy, Limited right to Use and Intellectual Property Rights.

6.4 Licensee is explicitly forbidden from making any use of the Material other than stated in this Agreement under penalty of a fine of EUR 100.000 immediately due to Licensors. Licensors reserves the right to pursue other legal remedies in addition to the penalty set out above if Licensee is proven to be in breach of this condition.

6.5 If Licensee enters into an agreement with a third party for the maintenance, correction and/or modification of the Product, Licensee warrants that it shall impose upon third party the obligations as set out in Clause 6.3 and Clause 6.4 above.

7. OBLIGATIONS OF ESCROW EUROPE

7.1 Escrow Europe shall safely store and keep the two latest deposits of the Material in its vaults. Furthermore Escrow Europe shall use its best endeavours to prevent unauthorised third parties from having access to its vaults.

7.2 If and as far as any confidential information comes to the attention of Escrow Europe it shall not divulge the same to any third party. This obligation of confidentiality shall also apply to its employees, agents or authorised third parties. Under confidential information in this Article is to be

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understood:

- the Material on deposit;
- information, disclosed to Escrow Europe under notification of confidentiality.

7.3 Escrow Europe shall not disclose or divulge the Material to any third person save such of its employees who need the Material for verification purposes. Escrow Europe will see to it that immediately after a verification procedure the Material and any copy made, will be removed from the computer system used for the verification.

7.4 If despite the security measures and other precautions taken by Escrow Europe damage is done to, or loss takes place of, the Material, Escrow Europe shall be obliged to promptly notify Licensor of this fact and Licensor shall be obliged to promptly provide a new copy of the Material to Escrow Europe. The costs of providing a new copy shall be to the account of Escrow Europe unless and to the extent that Licensor has not complied with its obligation to keep back-up copies as set out under Article 3 above ("Back-up").

8. LIABILITY

8.1 Escrow Europe shall be liable to Licensor and/or Licensee for direct damage to the Material or any other damage arising out of or in connection with the performance of the Agreement, provided such damage is the result of negligence or wilful misconduct of Escrow Europe, in which case its obligation to pay damages shall not exceed a sum of EUR 500.000 in total.

8.2 Escrow Europe shall not be liable for any indirect damage including, but not limited to, industrial damage, loss of profits and/or other consequential damages.

8.3 Escrow Europe shall be responsible for the diligent execution of its verifications. Escrow Europe is not responsible for the completeness, accuracy, operation, functionality, or effectiveness of the Material as such.

8.4 Licensor or, in the event that Escrow Europe has released the Material to Licensee, Licensee shall indemnify Escrow Europe from and against all claims by third parties which arise out of or are otherwise connected with the release of the Material under the Agreement.

9. TERM OF THE AGREEMENT

- 9.1 The Agreement shall commence on the date that the parties have signed the Agreement and shall be entered into for indefinite time.
- 9.2 Licensee may upon three (3) months notice terminate the Agreement by delivery of notice to this effect by recorded delivery to Licensor and Escrow Europe.
- 9.3 Licensor, having deposited the Material on behalf of Licensee, has no right to unilaterally terminate the Agreement without the prior written consent of Licensee being provided to Escrow Europe, other than in the specific circumstances as defined under Clause 9.4 below.
- 9.4 Licensor shall be entitled to terminate the Agreement without condition if Escrow Europe suffers bankruptcy or if Escrow Europe fails to perform its obligations under the Agreement and fails to correct the default within thirty (30) days of having been notified by Licensor of the default.

In such circumstance, at the request of Licensee, Licensor is obliged to deposit the Material with another Escrow Agent at its choice. Escrow Europe thereupon is obliged to transfer the Material, to either the escrow agent designated by Licensor or, in case Licensee decides not to continue the escrow, to Licensor itself.

10. PAYMENT OF FEES

- 10.1 For the services to be rendered by Escrow Europe under the Agreement, Licensee shall be due to pay the fees as specified in **Annex II**.
- 10.2 Escrow Europe shall invoice the initial fee upon finalisation of the Agreement. Escrow Europe shall invoice Licensee the yearly fee (**Annex II, sub B**) upon signing of the Agreement and thereafter annually upon the anniversary date.
- 10.3 Escrow Europe is authorised to readjust the yearly fee in accordance with the (yearly) general price index as published by the Dutch Central Statistical Office (CBS).
- 10.4 Payment of invoices rendered by Escrow Europe shall be due within thirty (30) days of the invoice date. If the invoice is not paid by the due date Licensee shall be liable for legal interest for the period that payment has been delayed.
- 10.5 If Licensee has not paid the invoice rendered by Escrow Europe in accordance with its due date, Licensee shall not be entitled to invoke the provisions of Article 5 ("Release") herein and Escrow

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Europe shall have no obligation to release the Material to Licensee.

10.6 In the event of a termination of the Agreement, Escrow Europe shall have no obligation to refund all or part of any – charged or paid – fees hereunder.

11 ASSIGNMENT

11.1 Licensor undertakes to make the terms of the Agreement part of any transfer of the intellectual property rights of the Product(s) to a third party.

11.2 In such a case Licensor shall inform in writing both Licensee and Escrow Europe.

12. MISCELLANEOUS

12.1 The (performance of the) Agreement and all modifications or amendments thereto shall be governed by Dutch law. The parties shall submit any dispute which might arise with respect to (the performance of) the Agreement in the first instance to the jurisdiction of the competent court in Amsterdam.

12.2 All costs, both in and out of court, including those of legal assistance, incurred by one party due to the non-performance of a material condition by the other party to the Agreement shall be for the account of the party which has failed to perform its condition.

Agreed and signed in threefold:

Licensor _____	Licensee _____	Escrow Europe BV _____
Place: _____	Place: _____	Amsterdam,
Date: _____ 2010	Date: _____ 2010	Date: _____ 2010

Annex I: Product(s) and Material to be deposited

Licensor declares to deposit with Escrow Europe the following Material concerning the Product as specified below, in accordance with the terms and conditions of the Agreement this Annex is part of.

Product : _____

Description	YES	NO
Source codes	<input type="radio"/>	<input type="radio"/>
Documentation	<input type="radio"/>	<input type="radio"/>
Escrow Deposit Specification Form	<input type="radio"/>	<input type="radio"/>

Licensor

Licensee

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