

## SOURCE CODE ESCROW AGREEMENT

### THE UNDERSIGNED:

1. [Software Company], having its place of business at [Address], for the purpose hereof represented by [Initials & Surname], herinafter reffered to as **"Licensor"**;
2. Escrow Alliance BV, having its place of business at Kenaupark 3, 2011 MP Haarlem, The Netherlands, for the purpose hereof represented by [Initials & Surname], herinafter reffered to as **"Escrow Alliance"**;

### WHEREAS:

- I By License Agreement Licensor granted to Licensee(s), either directly or through distributors, a license of the program product ("Product") as set out in **Annex I: Materials Deposit**;
- 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(s), as to be further specified, the source code of the Product and related technical documentation as set out in Annex I: Materials Deposit with Escrow Alliance under the conditions specified herein;

### HEREBY AGREE:

Two Party Escrow Agreement  
Agreement number : 000000-00  
Software :  
Date : 00-00-2011  
Licensor :  
Licensee :

Initials Licensor

Initials Escrow Alliance BV



**ARTICLE 1 - DEFINITIONS**

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

<b>Beneficiary Declaration</b>	a written confirmation through which Licensor declares to subscribe licensee to the escrow arrangement;
<b>Source Code</b>	the computer programming code of the Product in human readable format, including all documentation and instructions necessary to maintain, interpret, compile and install;
<b>Escrow Certificate</b>	a certificate issued by Escrow Alliance to the Licensee confirming escrow cover pursuant to the terms of conditions of the Agreement. The Escrow Certificate will be issued within five (5) workingdays after the reception of a Beneficiary Declaration;
<b>Escrow Regulations</b>	the terms as set out in the Escrow Regulations and the application thereof form part of the Escrow Agreement between the Licensor, Licensee and Escrow Alliance;
<b>Licensee</b>	<p>a beneficiary in the form of a person, an institution, a corporation or other legal body or entity to whom a licensor has given permission to use the product and to whom Escrow Alliance has issued an Escrow Certificate.</p> <p>A licensee that does not wish to participate in this escrow arrangement should inform Escrow Alliance in writing, by registered mail of this wish. The licensee acknowledges that no further claim may be made from the provisions as set out in Article 5.1;</p>
<b>Licensor</b>	supplier who through means of a license agreement exercises the right to issue the use right of its product(s) either directly or through a distributor;
<b>Agreement</b>	this Three Party Escrow Agreement between Licensor, Licensee and Escrow Alliance;
<b>Continuity Purposes</b>	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;
<b>Licence agreement</b>	the licence agreement between Licensor, Licensee and Escrow Alliance;
<b>Maintenance Obligations</b>	the conditions set out in the Licence and/or Maintenance Agreement under which Licensor has agreed to maintain the Product;
<b>Material</b>	<p>I the source code of the Product;</p> <p>II all alterations, updates and/or corrections of the Product, which are made available by Licensee within the scope of Licensor's release policy;</p> <p>III all technical documentation, relevant and necessary for the maintenance of the Product;</p>



<b>Medium</b>	the data carrier(s) containing the Material;
<b>Product(s)</b>	the programm product(s) as detailed in <b>Annex I: Materials Deposit</b> , licensed to Licensee under the Licence Agreement, which form the subject of the escrow arrangement;
<b>Technical Documentation</b>	the technical documentation required to enable Licensee to maintain, amend, correct and/or modify the source code of the Product.

## ARTICLE 2 - DEPOSIT

- 2.1 Licensors shall transfer the ownership of the Medium, containing the Material, to Escrow Alliance within thirty (30) days after the Agreement has come into effect.
- 2.2 Licensors 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.
- 2.3 Escrow Alliance will confirm the deposit of the Material to Licensee in writing. If Licensee does not receive the confirmation of deposit prior to or within thirty (30) days after operational implementation, Licensee shall immediately notify Escrow Alliance in writing.
- 2.4 Escrow Alliance shall hold the three (3) latest deposits of the Material for the term of the Agreement. Older Material, prior to the three latest deposits, shall be destroyed by Escrow Alliance unless agreed otherwise in this Agreement.
- 2.5 Escrow Alliance 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 Alliance of any intellectual property rights in the Material. These intellectual property rights shall at all times remain vested in Licensors or such other third party as may be determined from time-to-time.
- 2.7 Licensors hereby grants Escrow Alliance the rights to
  - make a back-up 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").

## ARTICLE 3 - BACK-UP

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



**ARTICLE 4 - VERIFICATION**

- 4.1 With each deposit, Licensors shall provide to Escrow Alliance an Escrow Deposit Form (EDF), setting out the details of the Material which is deposited on behalf of Licensee. Licensors warrants that the Material contains an accurate and complete reflection of the Product licensed by Licensee at the time of deposit.
- 4.2 Escrow Alliance will check each deposit for the presence and readability of the materials as specified in the Escrow Deposit Form. In addition to this Escrow Alliance will carry out an annual verification (TVS Source code level 3) on the deposited materials. The Licensors will, in so far as is reasonable and necessary, cooperate in this matter. Escrow Alliance will inform the Licensors and Licensee of their findings within 5 days of the verification being completed.
- 4.3 Licensee shall at any time be entitled to request Escrow Alliance for extended verification. If a verification is requested, Licensors is obliged to cooperate with Escrow Alliance in the execution of the verification in as far as reasonably necessary.
- 4.4 The costs of Escrow Alliance, Licensors and Licensee, borne by additional verification set out under Clause 4.3 above, shall be to the account of Licensee, unless the verification shows that Licensors materially has not met its obligations hereunder, in which case Licensors shall bear the costs.
- 4.5 If verification shows that the Material as deposited with Escrow Alliance does not contain an accurate and complete reflection of the Product licensed by Licensee at the time of the deposit, then Licensors shall restore the discrepancy within thirty (30) days of the verification.

**ARTICLE 5 - RELEASE**

- 5.1 Provided Licensee had a valid Licence Agreement, Escrow Alliance 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 by Licensee;
  - Licensors does not comply with Clause 11.1 or has been subject to a take-over by 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 Alliance 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 Alliance shall within seven (7) days serve notice in writing upon Licensor that a request for the release of Material has been received. Licensor shall have fourteen (14) days from the date of this notice from Escrow Alliance to register any objection to such release. If Licensor fails to register an objection or fails to register an objection within the stated fourteen (14) days, Escrow Alliance shall be entitled to promptly release the Material to Licensee.
- 5.4 If within the term set out under Clause 5.3 above Licensor 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](http://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 Foundation for the Settlement of Automation Disputes shall be final and binding on all parties and shall not be subject to appeal to a court in legal proceedings.
- 5.5 If Licensor suffers bankruptcy then Licensor shall have no right of objection under Clause 5.3 above.
- 5.6 In case Escrow Alliance releases the Material to Licensee pursuant to the provisions in this Article. Licensor grants Licensee the non-exclusive right to use the Material for Continuity Purposes only.

#### ARTICLE 6 - WARRANTIES

- 6.1 Licensor warrants and represents that it is entitled to transfer the Material to Escrow Alliance pursuant to the provisions of the Agreement and agrees to indemnify and hold harmless Escrow Alliance from and against any claim by third party in relation to the verification and/or release of the Material hereunder.
- 6.2 Licensor warrants that the Material is an accurate and complete representation of the Product at the time of deposit
- 6.3 Licensor warrants to Licensee that the Material as deposited with Escrow Alliance is sufficient to enable a qualified person to continue maintenance, correct, modify and compile of the Product.
- 6.4 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 Rights to Copy, Limited Right to Use and Intellectual Property Rights.
- 6.5 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 Licensor. Licensor reserves the right to pursue other legal remedies in addition to the penalty set above if Licensee is proven to be in breach of this condition.
- 6.6 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 6.4 and Clause 6.5 above.



## ARTICLE 7 - OBLIGATIONS ESCROW ALLIANCE

- 7.1 Escrow Alliance shall hold the Material on deposit in a safe and secure environment and shall use reasonable endeavours to prevent unauthorised parties from having access to such environment.
- 7.2 Escrow Alliance shall throughout the term of the Agreement keep the deposits of the Material in its vaults. Furthermore Escrow Alliance shall use reasonable endeavours to prevent unauthorised third parties from having access to its vaults.
- 7.3 If and as far as any confidential information comes to the attention of Escrow Alliance it shall not divulge the same to any third party. This obligation of confidentiality shall also apply to its employees and authorised third parties. Under confidential information in this Article is to be understood:
- the Material on deposit;
  - information, disclosed to Escrow Alliance under notification of confidentiality.
- 7.4 Escrow Alliance shall not disclose or divulge the Materials to any third person save such of its employees and/or authorised third parties who need the Material for verification purposes. Escrow Alliance 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.
- 7.5 In the event that Material in relation to a Product is deposited with Escrow Alliance for multiple Licensees and where Article 5 is applicable, Escrow Alliance has the right to make and provide copies to the beneficiaries. The costs related to this will be born by the Licensee.
- 7.6 If despite the security measures and other precautions taken by Escrow Alliance damage is done to, or loss takes place of, the Material, Escrow Alliance 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 Alliance as set out under Article 2 above. The costs of providing a new copy shall be to the account of Escrow Alliance 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.
- 7.7 In the event that this Agreement terminates after release of the Material to Licensee in conformity with the provisions of this Agreement, the provisions with respect to the obligations of Licensee and confidentiality shall remain applicable.

## ARTICLE 8 - LIABILITY

- 8.1 Escrow Alliance shall be liable to Licensor and/or Licensee for direct damage to the Material of 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 Alliance, in which case its obligation to pay damages shall not exceed a sum of EUR 250.000,- in total.
- 8.2 Escrow Alliance 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 Alliance shall be responsible for the diligent execution of its verifications. Escrow Alliance 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 Alliance has released the Material to Licensee, Licensee shall indemnify Escrow Alliance 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.

#### ARTICLE 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 Escrow Alliance.
- 9.3 Licensor, having deposit 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 Alliance, 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 Alliance suffers bankruptcy or if Escrow Alliance fails to perform its obligations under the Agreement and fails to correct the default after 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 Alliance 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.

#### ARTICLE 10 - PAYMENT OF FEES

- 10.1 For the services to be rendered by Escrow Alliance under the Agreement, Licensor shall be due to pay the fees as specified in **Annex II: Payment of fees**.
- 10.2 Escrow Alliance shall invoice the initial fee upon finalisation of the Agreement.
- Escrow Alliance shall invoice Licensee the yearly fee upon signing of the Agreement and thereafter annually upon the anniversary date.
- 10.3 Escrow Alliance 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 Alliance 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 In the event of a termination of the Agreement, Escrow Alliance shall have no obligation to refund all or part of any, charged or paid, fees hereunder

#### ARTICLE 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 Alliance.

#### ARTICLE 12 - MISCELLANEOUS

12.1 In all cases where the Agreement mentions the obligations to give written notice, such notice shall be sent to the addresses in **Anex III: Correspondence and Contact details**.

12.2 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 twofold:

Licensor :

Place : \_\_\_\_\_ Date : \_\_\_\_\_

Name : \_\_\_\_\_ Signature : \_\_\_\_\_

Escrow-agent : Escrow Alliance BV

Place : \_\_\_\_\_ Date : \_\_\_\_\_

Name : \_\_\_\_\_ Signature : \_\_\_\_\_





## ANNEX I: MATERIAL DEPOSIT

Licensor declares to deposit with Escrow Alliance 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 : \_\_\_\_\_  
(name as known or licensed to Licensee)

Product discription : \_\_\_\_\_  
\_\_\_\_\_

Version : \_\_\_\_\_

### Material(s):

- Source code
- Documentation
- Escrow Deposit Form (EDF)

\_\_\_\_\_  
Licensor

\_\_\_\_\_  
Licensee

