**HELSINKI REGION CHAMBER OF COMMERCE**

**ESCROW AGREEMENT**

**1 Parties to the Agreement**

 1.1 [company name and business ID] (hereinafter the “Licensor“)

 [address]

 [e-mail and telephone number]

 [contact person]

 [VAT number]

 e-invoice address

 1.2 [company name and business ID] (hereinafter the “Licensee“)

 [address]

 [e-mail and telephone number]

 [contact person]

 [VAT number]

 e-invoice address

 1.3 Helsingin Kamari Oy (hereinafter the “Escrow Agent“)

 [address]

 [e-mail and telephone number]

 [contact person]

**2 Definitions**

 *“Product“* means a software program called [the name of the program].

*“Material“* means the source code and / or the documentation of the Product deposited in accordance with this Agreement. Any references to the Material hereinafter shall apply, where applicable, also to the Modification.

*“Modification“* means modifications or updates to the Product or modified or updated versions of the Product, which are delivered to the Licensee by the Licensor in accordance with the Reference Agreement.

 *“Agreement“* means this agreement.

*“Reference Agreement“* means the software license agreement and / or the maintenance agreement between the Licensor and the Licensee related to the Product and specified in Appendix 1.

**3 Purpose of the Agreement**

3.1 The purpose of the Agreement is to ensure that the Licensee can use and maintain the Product in accordance with the Reference Agreement. In order to carry out the purpose, the Material shall be deposited with an independent party, i.e. the Escrow Agent, on behalf of the Licensee so that the Licensee shall have the opportunity to obtain the Material as hereinafter defined, subject to, however, securing the confidentiality of the Material.

3.2. With the Agreement the parties shall define the terms and conditions,

 3.2.1 upon which the Licensor shall deposit the Material specified in Appendix 2 with the Escrow Agent;

 3.2.2 upon the fulfillment of which the Escrow Agent shall release the Material to the Licensee; and

 3.2.3 upon which the Licensee shall have the right to use the Material provided that the conditions for the release have been fulfilled.

**4 Rights to the Product and the Material**

4.1 This Agreement shall have no effect on the intellectual property rights related to the Product or the Material but these rights shall be determined pursuant to the Reference Agreement. The Licensee shall, however, have the right to use the Material in accordance with the Agreement and the Reference Agreement provided that the Material has been released to the Licensee in accordance with the terms of this Agreement.

4.2 The Licensor represents and warrants that it has adequate rights to the Product and the Material in order to deposit the Material and to enter into this Agreement regarding the Material.

**5 Deposit of the Material with the Escrow Agent**

5.1 The Licensor shall, within fourteen (14) days of the date when the Agreement has entered into force, deposit the Material with the Escrow Agent either (a) stored on a physical carrier media, or (b) by on-line transfer of an electronic copy. In either case, the Material may not be in an encrypted form and it must be accessible and usable without submitting any identification data. If the Material is deposited with the Escrow Agent on a physical carrier media, such as a CD, an external hard drive, a USB memory stick, a magnetic tape, or other commonly used machine readable storage medium, the Material shall be provided in a sealed package, containing a complete and up-to-date copy of the Material as specified in Appendix 2. Unless otherwise agreed, the size of the package must not exceed the following dimensions: 35 cm x 30 cm x 10 cm. If the Material is deposited with the Escrow Agent as an electronic copy (i.e. by on-line transfer), the Material must be submitted as more closely described in Appendix 4 (which may be updated from time to time by the Escrow Agent), and it must not require storage space in excess of twenty (20) gigabytes, unless otherwise agreed by the Parties. For purposes of this Agreement, the Licensor and the Licensee accept and undertake to comply with the customer account description, data transfer methods, programs and file format requirements specified by the Escrow Agent from time to time.

5.2 The Licensor warrants that the latest version of the Product delivered to the Licensee can be generated out of the Material deposited with the Escrow Agent. Furthermore, the Licensor warrants that the Material shall contain all the necessary and available written information and technical documentation by the aid of which a programmer with relevant work experience and professional skills can maintain, repair and modify the Product without any assistance from the Licensor.

5.3 In connection with the deposit of the Material, the Licensor shall also deliver to the Escrow Agent a written statement including at least the following information:

 1. the parties to the Agreement;

 2. the date of signature of the Agreement;

 3. the date of deposit of the Material; and

 4. the identification of the Material to be deposited.

5.4 In the event that the Licensor delivers to the Licensee a Modification, the Licensor shall deposit with the Escrow Agent the updated Material including the Modification in accordance with Clauses 5.1 - 5.3 above within thirty (30) days of the delivery of the Modification to the Licensee. A Modification shall be deposited with the Escrow Agent in the same form and method (i.e. either stored on a physical carrier media or by on-line transfer of an electronic copy) as used when depositing the Material to which the Modification relates to. The Escrow Agent shall have the right to return the previous version of the deposited Material to the Licensor, if deposited stored on a physical carrier media, or to delete the electric copy of the previous version of the Material, if deposited as an electronic copy, provided that in connection with the deposit of the Modification, the Licensor confirms in writing that the new Material to be deposited contains also the previous Material in its entirety and the Licensee gives its written consent to the returning and / or deletion of the previous version, such consent not to be withheld without a justifiable reason.

5.5 At the Licensee’s request, the parties shall together perform an inspection and / or test of the Material in a place in Helsinki, Finland determined by the Escrow Agent, which inspection and / or test, based on the Licensor’s demonstration, shall reasonably ascertain that the Material fulfils the requirements of the Agreement. The Escrow Agent and the Licensor shall have the right to charge the Licensee for the working hours and other costs and expenses resulting from the inspection and / or test. Should the inspection or test reveal that the Material is defective or deficient, the Licensor shall have the duty to immediately deliver to the Escrow Agent corrected Material where the defects and deficiencies have been remedied. In that case, the Licensor shall be responsible for all costs and expenses under this Clause 5.5, in addition to which the Licensee shall have the right to charge the Licensor for the working hours and other costs and expenses resulting from the inspection and / or test. If the inspection and / or test has been performed regarding Material deposited with the Escrow Agent stored on a physical carrier media, the duties of the Escrow Agent regarding the inspection and the test are limited to the delivery of the Material to the inspection and / or the test organized by the Licensee and the Licensor and to the collection of the Material back to deposit after the inspection and / or the test. If the inspection and / or test has been performed regarding the Material deposited with the Escrow Agent by on-line transfer of an electronic copy, the Escrow Agent's duties shall be limited to downloading the Material to physical carrier media and handing over the physical carrier media to the Licensor for purposes of demonstration to reasonably ascertain that the Material fulfils the requirements of the Agreement, after which the Escrow Agent shall have the right to destroy the data on the physical carrier media.

**6 Duties of the Escrow Agent**

6.1 The Escrow Agent shall

 6.1.1 if the Material is deposited with the Escrow Agent stored on a physical carrier media, keep the Material in a safe place and in a secure manner, and if the Material is deposited with the Escrow Agent by on-line transfer of an electronic copy, store it on a secure electronic deposit described in Appendix 4, so that the confidentiality of the Material shall not be endangered;

 6.1.2 confirm the receipt of the Material to the Licensor and the Licensee within seven (7) days of the deposit of the Material with the Escrow Agent;

 6.1.3 maintain written records on its actions taken pursuant to the Agreement; and

 6.1.4 release the Material as hereinafter defined.

**7 Release of the Material pursuant to the Agreement**

7.1 The Escrow Agent undertakes to release the Material to a party determined together by the Licensor and the Licensee provided that the Licensor and the Licensee both request it in writing from the Escrow Agent.

7.2 The Escrow Agent undertakes to release the Material to the Licensee in accordance with Clauses 7.3 - 7.7 below provided that the Licensee requests the release of the Material in writing and it is stated in such request that any of the following conditions have been fulfilled:

 7.2.1 The Licensor is declared bankrupt or placed into liquidation or the Licensor’s financial situation has materially deteriorated so that it becomes evident that the Licensor will not be able to fulfill its obligations under the Reference Agreement;

 7.2.2 The Licensor has discontinued its business regarding the maintenance of the Product or transferred to a third party either (i) the copyright to the Product or (ii) its business regarding the Product or its maintenance and the Licensee and such third party have not agreed in writing on any other proceeding within thirty (30) days of the Licensee’s receipt of information on the transfer; or

 7.2.3 The Licensor has materially breached its obligations under the Reference Agreement and has not remedied the breach within thirty (30) days of the Licensor’s receipt of the Licensee’s written notice thereof.

7.3 Upon the request for release specified in Clause 7.2, the Escrow Agent shall send a copy of the request to the Licensor without delay and inquire in writing whether the Licensor accepts the release of the Material. The Licensor shall give its written reply to the inquiry within fourteen (14) days of the dispatch of the inquiry.

7.4 Should the Licensor either accept in writing the release of the Material to the Licensee or not give its written reply within the time limit specified in Clause 7.3, the Escrow Agent shall release the Material to the Licensee without delay.

7.5 Should the Licensor object to the release of the Material to the Licensee within the time limit specified in Clause 7.3, the Escrow Agent may not release the Material to the Licensee. In that case the Escrow Agent shall give to the Licensee a notice thereof without delay and continue to keep the Material in escrow.

7.6 Should the Licensee wish to obtain the Material despite the Licensor’s notice specified in Clause 7.5, the Licensee shall have to institute specific arbitration proceedings defined in Clause 7.7 within thirty (30) days of the Licensee’s receipt of the Escrow Agent’s written notice of the objection to the release of the Material to the Licensee.

7.7 In the specific arbitration proceedings defined below in this Clause, the sole question to be determined shall be whether any of the conditions for the release of the Material pursuant to Clauses 7.2.1 - 7.2.3 above have been fulfilled so that the Escrow Agent shall have the duty to release the Material to the Licensee pursuant to the Agreement. The parties undertake to comply with the decision rendered in these proceedings. The procedure in the arbitration shall be as follows:

 7.7.1 The Licensee shall deliver to the Board of Arbitration of the Central Chamber of Commerce of Finland a written application where it requests the Board of Arbitration to appoint one impartial lawyer familiar with IT law and independent of the parties to the dispute to act as an arbitrator who shall finally settle the issue on whether the conditions under the Agreement for the release of the Material have been fulfilled. Otherwise the arbitration shall be conducted in accordance with the rules for Expedited Arbitration of the Arbitration Institute of the Central Chamber of Commerce of Finland.

 7.7.2 The Licensor and the Licensee shall be jointly and severally liable for the fee of the arbitrator. The arbitrator shall state in his / her decision how the fee shall be divided between the Licensor and the Licensee. Unless there are no specific reasons, the fee and the parties’ costs and expenses for the arbitration shall be ordered to be borne by the Licensee when it is found that none of the conditions for the release of the Material have been fulfilled and by the Licensor when it is found that a condition for the release of the Material has been fulfilled.

 7.7.3 Should the Licensor or the Licensee deliver to the Escrow Agent a copy of the decision confirming that a condition for the release of the Material has been fulfilled, the Escrow Agent shall release the Material in accordance with the said decision without undue delay. Otherwise the Escrow Agent shall continue to keep the Material in escrow in accordance with the Agreement.

**8 The Licensee’s Right to Use the Material**

8.1 In the event that the Material is released to the Licensee in accordance with the Agreement, the rights of the Licensee to the Material shall be determined pursuant to the Reference Agreement. However, the Licensee shall always, either personally or with the aid of a third party of its choosing, have at least the right to use, modify and copy the Material as necessary in order to use, repair and modify the Product. The Licensee shall have the right, either personally or with the aid of a third party of its choosing, to prepare machine readable (binary language) versions of the Material and of the modifications and / or additions thereto that the Licensee has made or has had made as well as to use such machine readable versions in accordance with the Reference Agreement.

**9 Fees**

9.1 The Escrow Agent’s fee pursuant to the Agreement shall consist of an establishment fee, annual fee, modification fee and release fee in accordance with the Escrow Agent’s then current price list. The effective price list on the date of the signature of the Agreement is attached hereto as Appendix 3. The Escrow Agent shall have the right to change the price list by notifying the Licensor and the Licensee thereof in writing at least ninety (90) days prior to the effective date of change. The changes shall have no effect on the payments charged before the effective date of change.

9.2 Should the Licensor or the Licensee require the Escrow Agent to take any other measures than to receive and release the Material as well as to keep the Material in escrow, the Escrow Agent may also charge the actual working hours and the costs and expenses in accordance with its then current price list.

9.3 Notwithstanding anything to the contrary in this Agreement, the Escrow Agent shall have no obligation to release the Material before all its receivables pursuant to the Agreement have been paid in full.

9.4 The Licensee shall pay all the fees of the Escrow Agent defined in Clause 9.1. The Licensor and the Licensee shall, however, be jointly and severally liable for the payment of all the Escrow Agent’s fees. The fees shall be paid to the Escrow Agent against an invoice. The term of payment is fourteen (14) days from the date of invoice and the interest on delayed payments accrues in accordance with the Interest Act (633/82).

**10 Term and Termination of the Agreement**

10.1 The Agreement shall enter into force after all the parties to the Agreement have signed it. The Agreement is made for an indefinite period. The Agreement may be terminated only as hereinafter defined.

10.2 In the event of termination of the Agreement for any reason except pursuant to Clause 10.7, the Material shall be returned to the Licensor in accordance with Clause 10.10, unless the Licensee and the Licensor otherwise inform the Escrow Agent in writing.

10.3 The Escrow Agent shall have the right to terminate this Agreement upon ninety (90) days’ written notice. However, the Escrow Agent shall not have the right to terminate the Agreement without first negotiating with the Licensor and the Licensee in order to find a solution, which shall reasonably secure the purpose of the Agreement.

10.4 The Licensee shall have the right to terminate the Agreement without a notice period.

10.5 The Licensor shall have the right to terminate the Agreement by notice only upon the receipt of the Licensee’s prior written permission thereto and the delivery of a copy of the permission to the Escrow Agent.

10.6 Any party shall have the right to terminate the Agreement without a notice period provided that all the Reference Agreements have been indisputably terminated.

10.7 The Agreement shall expire if the Escrow Agent releases the Material in accordance with Clause 7.

10.8 The Escrow Agent shall have the right to terminate the Agreement with immediate effect if any of the Escrow Agent’s receivables based on the Agreement have been unpaid for over sixty (60) days from the due date and the payment has not been made within thirty (30) days of the dispatch of the Escrow Agent’s written notice of the delay. In the event of the Licensor’s negligence of payment, the termination shall, however, be subject to the Escrow Agent’s written notice of the delay to the Licensee and the Licensee’s failure to pay the outstanding receivable within thirty (30) days of the dispatch of the notice.

10.9 The termination of the Agreement for whatever reason shall always be notified to the other parties in writing.

10.10 Upon the termination of the Agreement, the Escrow Agent shall release the Material to the entitled party at the Escrow Agent’s option as follows:

 10.10.1 If the Material has been deposited with the Escrow Agent stored on a physical carrier media, the Escrow Agent shall notify the entitled party in writing that the Material is available for collection in a place in Helsinki, Finland determined by the Escrow Agent. The Escrow Agent shall have the right to destroy the Material at the expense of the entitled party if such party has not collected the Material within six (6) months of the above notification; or

 10.10.2 If the Material has been deposited with the Escrow Agent by on-line transfer of an electronic copy, the Escrow Agent shall notify the entitled party in writing that the Material is available for access and download from the electronic deposit, for a period of six (6) months from the date of termination of the Agreement. The Escrow Agent shall delete the Material if such party has not downloaded the Material within six (6) months of the above notification.

**11 Liability of the Escrow Agent**

11.1 The Escrow Agent undertakes to fulfill its obligations under this Agreement with care and to the best of its abilities. The Escrow Agent is not responsible for any damage, alteration or loss of the Material in connection with the transfer of data to or from The Escrow Agent. The Escrow Agent shall not be liable for any damage to the Material or any other damages caused by any act or omission by any other party to the Agreement.

11.2 The Escrow Agent shall not be liable for anything relating to the Product, Material or Modification, such as their conformity with the Agreement, completeness, correctness, quality or condition.

11.3 The Escrow Agent shall have neither a duty to examine the delivered Material’s or Modification’s conformity with the Agreement, completeness, correctness, quality or condition, nor a duty to examine whether the material deposited with it is the Material specified in the Agreement.

11.4 The Escrow Agent may rely on any written notification, notice, communication, demand, request or any other correspondence submitted to it under this Agreement and act accordingly.

11.5 The Escrow Agent shall not be liable for any indirect or consequential damages.

11.6 The Escrow Agent shall not be liable for any damages in excess of ten thousand (10 000) euros unless the damage results from gross negligence or wilful misconduct.

11.7 Any party shall notify the Escrow Agent of a breach of the Agreement within fourteen (14) days of the party’s receipt of information on a cause thereto. The arbitration proceedings shall be instituted within twelve (12) months after a cause thereto has arisen.

**12 Liability of the Parties**

12.1 The Licensor and the Licensee shall be jointly and severally liable to the Escrow Agent for all the responsibilities, costs and expenses as well as damages accrued or caused to the Escrow Agent while fulfilling its duties under this Agreement.

**13 Force Majeure**

13.1 Any party shall not be liable for damages resulting from an obstacle beyond the party’s control which such party cannot reasonably be required to have taken into consideration at the time the Agreement was entered into and the consequences of which the party also could not reasonably have prevented.

13.2 Any party shall immediately notify the other parties of a force majeure event as well as the termination thereof.

**14 Confidentiality**

14.1 The parties undertake to keep in confidence the existence of the Agreement and the confidential information of the other parties received in connection with this Agreement. The Escrow Agent undertakes particularly to keep in confidence the Material deposited with it and not to release the Material or any information on the Material to any third parties (including the Licensee) unless otherwise agreed in this Agreement.

14.2 Upon the receipt of the Material pursuant to the Agreement, the Licensee shall keep the Material in confidence, not use it for any other purpose than as defined in the Agreement or the Reference Agreement and not release information thereon to a third party. However, this shall not prevent the Licensee from using a third party’s assistance in performing the tasks defined in Clause 8 or the Reference Agreement provided that such third party undertakes a corresponding duty of confidentiality.

14.3 The duty of confidentiality shall remain in force also after the termination of the Agreement.

**15 Entire Agreement and Amendments**

15.1 This Agreement and its Appendices constitute the entire agreement between the parties and supersede all prior communications between the parties concerning the subject matter hereof.

15.2 Any amendments and additions to the Agreement shall be made in writing and signed by all parties hereto.

**16 Transfer of the Agreement**

16.1 The parties shall have no right to transfer the Agreement. The Escrow Agent shall, however, have the right to transfer the Agreement with the other parties’ written consent, which consent they shall not withhold without a material and justifiable reason thereto. The Escrow Agent shall also have the right to transfer the collection of its receivables based on the Agreement.

**17 Notices, Communications and Changes of Addresses**

17.1 All notices, communications, demands, requests and other notifications under this Agreement shall be made in writing and sent by mail, telefax or e-mail to the address specified in Clause 1 of this Agreement (or such other address as may be later notified in writing by the receiving party to the other party) and shall be deemed given appropriately and notified at the following dates:

 17.1.1 if sent by mail, five days after the date of dispatch as first-class mail; and

 17.1.2 if sent by telefax or e-mail, on the next working day (from Monday to Friday excluding holy days) following the acknowledgement of receipt.

17.2 A party to this Agreement shall notify the other parties immediately in writing of any change of address.

**18 Settlement of Disputes and Applicable Law**

18.1 Unless otherwise agreed in this Agreement, any dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination or validity thereof, shall be finally settled by arbitration in accordance with the Rules for Expedited Arbitration of the Finland Chamber of Commerce. The arbitration proceedings shall take place in Helsinki. The Escrow Agent shall, however, have the right to demand payment based on the Agreement at the District Court of Helsinki.

18.2 This Agreement shall be governed by the laws of Finland excluding its choice of law provisions that would lead to the application of laws of a foreign country.

**19 Appendices**

 Appendix 1: Reference Agreement

 Appendix 2: Material

 Appendix 3: Price list

 Appendix 4: Electronic Deposit

**20 Agreement Documents**

This Agreement has been prepared in three (3) identical counterparts, one copy for each party. The parties acknowledge and agree that this Agreement may be executed by electronic signature at Visma Sign service, which electronic signature shall be considered as an original signature for all purposes and shall have the same force and effect as an original physical signature.

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 [Official Company Name of the Licensor]

 [Signature of the Licensor]

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_\_\_\_

 [Official Company Name of the Licensee]

 [Signature of the Licensee]

 In Helsinki, \_\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_\_\_\_

 [Official Company Name of the Escrow Agent]

 [Signature of the Escrow Agent]