

EXAMPLE

Software Escrow

Three Party Agreement

Regarding: **DEMO Business Product**
Agreement number: **201609-1474-07**
Escrow Terms: **201411-644-20**
Date: **7 September 2016**

[Supplier]

Supplier

&

[Beneficiary]

Beneficiary

&

EscrowDirect.eu

Escrow Agent

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The undersigned:

1. [Supplier], having its place of business at [Street], [Place] ([Postcode]), [Country], registered number , for the purpose hereof represented by [Signee Supplier], , hereinafter referred to as “**Supplier**”;
2. [Beneficiary], having its place of business at [Street], [Place] ([Postcode]), [Country], registered number , for the purpose hereof represented by [Signee Beneficiary], , hereinafter referred to as “**Beneficiary**”;
3. EscrowDirect.eu, having its place of business at Nieuwe Gracht 98, Haarlem (2011 NL), The Netherlands, registered number 51760312, for the purpose hereof represented by S.W. Remans, Director, hereinafter referred to as “**EscrowDirect**”;

Whereas:

- I By Agreement Supplier granted to Beneficiary a right of use limited to the Product as set out in **Article 1 (“Materials Deposit”)**;
- II The Source Code of the Product and all related Technical Documentation are the property of Supplier 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 Agreement, but are required for a proper understanding, maintenance, amendment and correction of the Product;
- IV Supplier acknowledges that Beneficiary under certain circumstances and exclusively for Continuity Purpose may require access to the Source Code of the Product and all related Technical Documentation;
- V Supplier agrees to deposit on behalf of Beneficiary the Source Code of the Product and related Technical Documentation as set out in **Article 1 (“Materials Deposit”)** with EscrowDirect under the conditions specified herein;

Hereby agree:

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Article 1 – Materials Deposit

1.1 Supplier declares to deposit with EscrowDirect the following Material concerning the Product as specified below, in accordance with the terms and conditions of the Escrow Agreement and associated Escrow Terms, known under Escrow Terms Number 201411-614-20, of which a copy is attached to this Escrow Agreement:

Product: DEMO Business Product

Product description: Dit product is een DEMO product van Business BV en doet zeer speciale bewerkingen op informatie en technologie

Material: Source Code
 Application (optional)
 Technical Documentation
 Escrow Deposit Form (EDF)

Article 2 – Release

2.1 EscrowDirect shall be obliged to release the Material to Beneficiary if:

- a. Supplier suffers bankruptcy;
- b. Supplier ceases its business undertaking without validly assigning its Maintenance Obligations and its obligations under this Escrow Agreement to a competent third party;
- c. Supplier does not comply with its Maintenance Obligations and/or its obligations under the Escrow Agreement to such an extent that its failure to comply endangers the continuity of use of the Product by Beneficiary;
- d. Supplier does not comply with Clause 1.1.1 of the Escrow Terms 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.

2.2 If in the opinion of Beneficiary a circumstance defined under Clause 2.1 above occurs and Beneficiary requires the release of the Material on the basis thereof, Beneficiary shall send a notice to this effect by registered letter to Supplier and EscrowDirect and containing within such a notice any reasonable evidence as Beneficiary may have in its possession to support the opinion.

2.3 Upon receipt of such notice as set out under Clause 2.2 above EscrowDirect shall within seven (7) days serve notice in writing upon Supplier that a request for the release of Material has been received. Supplier shall have fourteen (14) days from the date of this notice from EscrowDirect to register any objection to such release. If Supplier fails to register an objection or fails to register an objection within

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the stated fourteen (14) days, EscrowDirect shall be entitled to promptly release the Material to Beneficiary.

- 2.4 If within the term set out under Clause 2.3 above Supplier raises a written objection against the release and supports such an objection with reasonable evidence then parties shall submit the question of Supplier'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 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.
- 2.5 If Supplier suffers bankruptcy then Supplier shall have no right of objection under Clause 2.3 above.
- 2.6 In case EscrowDirect releases the Material to Beneficiary pursuant to the provisions in this article. Supplier grants Beneficiary the non-exclusive right to use the Material for Continuity Purpose only within the framework of its own operations.

Article 3 – Term of the Escrow Agreement

- 3.1 Commencing date Escrow Agreement: 7 September 2016
- 3.2 Ratification Escrow Agreement: `{{Dte_es_signer3:date}}`
- 3.3 Term of the Escrow Agreement: Indefinitely until terminated
- 3.3 Expiration date Escrow Agreement: Each year as of commencing date

Article 4 – Payments of Fees

- 4.1 For the services to be rendered by EscrowDirect under the Escrow Agreement an annual fee shall be due to pay in the amount of EUR 749,-.
- 4.2 The annual fee includes:
- 1x depositing
 - Depot Check Service (DCS)
 - Technical Verification Service Level 1 (TVS Level 1)
 - Verification Certificate executed TVS Level 1
- 4.3 EscrowDirect will invoice the annual fee in advance and for the first time after receipt of the Order Confirmation.
- 4.4 The invoice of the annual fee is digital and shall be due within fourteen (14) days of the invoice date and is payable by the [Beneficiary] as of commencing date.

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- 4.5 During the year, parties are entitled to deposit at an additional charge of EUR 225,- per deposit.
- 4.6 All prices are excluding VAT.

Article 5 – Contractual Provisions

- 5.1 The contractual provisions as set out in the Escrow Terms of 20 November 2014 (Escrow Terms Number 201411-644-20) are inextricably bound up with this Escrow Agreement.

Agreed and signed:

[Supplier]

{{SigB_es_:signer1:signatureblock}}

Signature

{{N_es_:signer1:fullname:required}}

Full name

{{Dte_es_:signer1:date}}

Date

[Beneficiary]

{{SigB_es_:signer2:signatureblock}}

Signature

{{N_es_:signer2:fullname:required}}

Full name

{{Dte_es_:signer2:date}}

Date

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EscrowDirect.eu

{{SigB_es_:signer3:signatureblock}}

Signature

{{N_es_:signer3:fullname:required}}

Full name

{{Dte_es_:signer3:date}}

Date

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Escrow Terms EscrowDirect.eu

Escrow Terms Number : **201411-644-20**

Date : **20 November 2014**

Article 1 - Definitions

The following expressions used in these Escrow Terms and the Escrow Agreement shall have the following meaning:

Agreement

the agreement between Supplier and Beneficiary concerning the Product;

Beneficiary

a party in the form of a person, an institution, a corporation or other legal body or entity to whom a Supplier has given permission to use the Product;

Continuity Purpose

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 Agreement;

Escrow Contract

the Software Escrow Three Party Agreement between Supplier, Beneficiary and EscrowDirect where these Escrow Terms are inextricably bound up to;

EscrowDirect

Abbreviated designation of escrow agent EscrowDirect.eu, part of Escrow Alliance BV, registered number 51760312, having its place of business in Haarlem, The Netherlands;

Material

- I the Source Code of the Product;
- II all alterations, updates and/or corrections of the Product, which are made available to Beneficiary within the scope of Suppliers release policy;
- III all Technical Documentation, relevant and necessary for the maintenance of the Product;

Medium

the data carrier(s) containing the Material and/or the electronic transfer of the Material;

Object Code

software in a for computers readable and executable format;

Maintenance Obligations

the conditions set out in the Agreement and/or maintenance agreement under which Supplier has agreed to maintain the Product

Product

the programme product(s) as detailed in the Escrow Agreement Article 1 ("Materials Deposit"), which form the subject of the Escrow Agreement;

Source Code

the computer programming code of the Product in human readable format, including all documentation and instructions necessary to maintain, interpret, compile and install;

Supplier

a party who through means of a Agreement exercises the right to issue the use right of its Product either directly or through a distributor;

Technical Documentation

the technical documentation required to enable Beneficiary to maintain, amend, correct and/or modify the Source Code of the Product.

Article 2 - Deposit

- 2.1 Within thirty (30) days after the Escrow Agreement has come into effect Supplier shall transfer the ownership of the Medium, containing the Material, to EscrowDirect or Supplier shall transfer the Material electronically to EscrowDirect on which Escrow Alliance will place the Material on her own Medium (deposit).
- 2.2 Supplier shall undertake to do the same for each alteration of the Product, within thirty (30) days of having made such alteration available to Beneficiary within the scope of its release policy.
- 2.3 EscrowDirect will confirm the deposit of the Material to Beneficiary. If Beneficiary does not receive confirmation of deposit prior to or within thirty (30) days after operational implementation, Beneficiary shall immediately notify EscrowDirect in writing.
- 2.4 EscrowDirect shall hold the three (3) latest deposits of the Material for the term of the Escrow Agreement. Older Material, prior to the three latest deposits, shall be destroyed by EscrowDirect.

- 2.5 EscrowDirect shall make no use of the Material other than it is entitled to pursuant to the Escrow Agreement and these Escrow Terms.
- 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 EscrowDirect of any intellectual property rights in the Material. These intellectual property rights shall at all times remain vested in Supplier or such other third party as may be determined from time-to-time.
- 2.7 Supplier hereby grants EscrowDirect 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 Beneficiary in accordance with the Escrow Agreement Article 2 (“Release”).

Article 3 - Verification

- 3.1 With each deposit, Supplier shall provide EscrowDirect an Escrow Deposit Form (EDF), setting out the details of the Material which is to be deposited on behalf of the Beneficiary. Supplier warrants that the Material contains an accurate and complete reflection of the Product issued to Beneficiary at the time of deposit.
- 3.2 EscrowDirect will check each deposit for the presence and readability of the materials as specified in the Escrow Deposit Form. EscrowDirect will inform Supplier and Beneficiary of their findings after the verification being completed.
- 3.3 Beneficiary shall at any time be entitled to request EscrowDirect for extended verification. If verification is requested, Supplier is obliged to cooperate with EscrowDirect in the execution of the verification in as far as reasonably necessary.
- 3.4 EscrowDirect will inform the Supplier and Beneficiary of their findings within five (5) days of the verification being completed.
- 3.5 The costs of EscrowDirect, Supplier and Beneficiary, borne by additional verification set out under Clause 3.4 above, shall be to the account of Beneficiary, unless the verification shows that Supplier materially has not met its obligations under the Escrow Agreement en these Escrow Terms, in which case Supplier shall bear the costs.
- 3.6 If verification shows that the Material as deposited with EscrowDirect does not contain an accurate and complete reflection of the Product issued to Beneficiary at the time of the deposit, then Supplier shall restore the discrepancy within thirty (30) days of the verification.

Article 4 - Back-Up

- 4.1 Supplier shall throughout the term of the Escrow Agreement hold available a copy of the Material as a back-up.

Article 5 - Obligations EscrowDirect

- 5.1 EscrowDirect shall hold the Material on deposit in a safe and secure environment and shall take all measures that can be reasonable expected considering the Escrow Agreement, these Escrow Terms and the interests of both Supplier and Beneficiary.
- 5.2 EscrowDirect shall throughout the term of the Escrow Agreement keep the deposits of the Material in its vaults. Furthermore EscrowDirect shall use reasonable endeavours to prevent unauthorised third parties from having access to its vaults.
- 5.3 EscrowDirect shall not disclose or divulge the Material to any third person save such of its employees and/or authorised third parties who need the Material for verification purpose. EscrowDirect 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.
- 5.4 If despite the security measures and other precautions taken by EscrowDirect damage is done to, or loss takes place of, the Material, EscrowDirect shall be obliged to promptly notify Supplier of this fact and Supplier shall be obliged to promptly provide a new copy of the Material to EscrowDirect as set out under Article 2 above. The costs of providing a new copy shall be to the account of EscrowDirect unless and to the extent that Supplier has not complied with its obligation to keep back-up copies as set out under Article 4 above.
- 5.5 On termination of the Escrow Agreement EscrowDirect shall destroy the Material.

Article 6 - Confidentiality

- 6.1 If and as far as any confidential information comes to the attention of EscrowDirect 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 EscrowDirect under notification of confidentiality.

6.2 On termination of the Escrow Agreement provisions with respect to the confidentiality clauses will survive.

Article 7 - Warranties

- 7.1 Supplier warrants and represents that it is entitled to transfer the Material to EscrowDirect pursuant to the provisions of the Escrow Agreement and these Escrow Terms agrees to indemnify and hold harmless EscrowDirect from and against any claim by third party in relation to the verification and/or release of the Material to Beneficiary within the provisions of the Escrow Agreement en these Escrow Terms.
- 7.2 Supplier warrants that the Material is an accurate and complete representation of the Product at the time of deposit.
- 7.3 Supplier warrants to Beneficiary that the Material as deposited with EscrowDirect is sufficient to enable a qualified person to continue maintenance, correct, modify and compile of the Product.
- 7.4 Beneficiary warrants and represents that it shall exclusively use any Material which is made available under the Escrow Agreement, Article 2 ("Release") for Continuity Purpose only and for the use thereof solely in connection with the internal business of Beneficiary. Beneficiary is reminded that certain conditions of the 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.
- 7.5 Beneficiary is explicitly forbidden from making any use of the Material other than stated in the Escrow Agreement and these Escrow Terms under penalty of a fine of EUR 10.000,- immediately due to Supplier. Supplier reserves the right to pursue other legal remedies in addition to the penalty set above if Beneficiary is proven to be in breach of this condition.
- 7.6 If Beneficiary enters into an agreement with a third party for the maintenance, correction and/or modification of the Product, Beneficiary warrants that it shall impose upon third party the obligations as set out in Clause 7.4 and Clause 7.5 above.

Article 8 - Liability

- 8.1 EscrowDirect shall be liable to Supplier and/or Beneficiary for direct damage to the Material of any other direct damage arising out of or in connection with the performance of the Escrow Agreement or these Escrow Terms, provided such damage is the result of negligence or wilful misconduct of

EscrowDirect, in which case its obligation to pay damages shall not exceed a sum of EUR 10.000,- in total.

- 8.2 EscrowDirect shall not be liable for any indirect damage including, but not limited to, industrial damage, loss of profits and/or other consequential damages in connection with or arising out of the Escrow Agreement or these Escrow.
- 8.3 EscrowDirect shall be responsible for the diligent execution of its verifications. EscrowDirect is not responsible for the completeness, accuracy, operation, functionality, or effectiveness of the Material as such.
- 8.4 Supplier or, in the event that EscrowDirect has released the Material to Beneficiary, Beneficiary shall indemnify EscrowDirect from and against all claims by third parties which arise out of or are otherwise connected with the release of the Material under the Escrow Agreement and these Escrow Terms.

Article 9 - Term of the Escrow Agreement

- 9.1 The Escrow Agreement shall ratified on the date that all parties have signed the Escrow Agreement. The commencing date of the Escrow Agreement is the date of giving EscrowDirect the order to draw up the Escrow Contract.
- 9.2 Beneficiary may upon three (3) months notice terminate the Escrow Agreement by delivery of notice to this effect by recorded delivery to EscrowDirect.
- 9.3 Supplier, having deposit the Material on behalf of Beneficiary, has no right to unilaterally terminate the Escrow Agreement without the prior written consent of Beneficiary being provided to EscrowDirect, other than in the specific circumstances as defined under Clause 9.4 below.
- 9.4 Supplier shall be entitled to terminate the Escrow Agreement without condition if EscrowDirect suffers bankruptcy or if EscrowDirect fails to perform its obligations under the Escrow Agreement and/or these Escrow Terms and fails to correct the default after having been notified in writing by Supplier of the default.

In such circumstance, at the request of Beneficiary, Supplier is obliged to deposit the Material with another escrow agent.

EscrowDirect thereupon is obliged to transfer the Material, to either the escrow agent designated by Supplier or, in case Beneficiary decides not to continue the escrow, to Supplier itself.

Article 10 - Payment of Fees

- 10.1 For the services to be rendered by EscrowDirect a fee will be charged in accordance with the Escrow Agreement, Article 4 (“Payment of Fees”).
- 10.2 EscrowDirect is authorised to readjust the yearly fee with a maximum of 10% a year.
- 10.3 EscrowDirect presents her invoice digitally available, unless otherwise agreed. Payment of invoices rendered by EscrowDirect shall be due within fourteen (14) days of the invoice date. If the invoice is not paid by the due date the invoices party shall be liable for legal interest for the period that payment has been delayed.
- 10.4 In the event parties fail to make payments, Supplier and Beneficiary are not entitled to invoke the provisions of the Escrow Agreement and these Escrow Terms and EscrowDirect shall therefore not be obliged to release the Materials to Beneficiary.
- 10.5 In the event of a termination of the Escrow Agreement, EscrowDirect shall have no obligation to refund all or part of any, charged or paid, fees.

Article 11 - Assignment

- 11.1 Supplier undertakes to make the terms of the Escrow Agreement and these Escrow Terms part of any transfer of the intellectual property rights of the Product to a third party.

- 11.2 In such a case Supplier shall inform in writing both Beneficiary and EscrowDirect.

Article 12 - Miscellaneous

- 12.1 In all cases where the Escrow Agreement and these Escrow Terms mentions the obligations to give written notice by registered letter, such notice shall be sent to the official registered address.
- 12.2 Where the word ‘writing’ is mentioned in the Escrow Agreement and these Escrow Terms, this also means by email, unless otherwise specified.
- 12.3 The Escrow Agreement and these Escrow Terms and all modifications or amendments thereto and also the performance of the Escrow Agreement and these Escrow Terms shall be governed by Dutch law. The parties shall submit any dispute that might arise with respect to (the performance of) the Escrow Agreement and these Escrow Terms in the first instance to the jurisdiction of the competent court in Amsterdam.
- 12.4 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 Escrow Agreement and these Escrow Terms shall be for the account of the party which has failed to perform its condition.