***MODEL ESCROW AGREEMENT SOURCE CODE***

This is only a model escrow agreement for the deposit of source code. The parties must therefore adjust the proposals of agreement to each individual matter, such as the various time limits proposed. The terms of this model agreement are to be understood as proposals only and not as legal advice.

Provisions which refer to the role of Nordic Trustee ASA as escrow agent, may however not to be changed.

Deposit No: \_\_\_\_\_

(*to be completed by the Escrow Agent)*

E S C R O W A G R E E M E N T

……………….., [Address, Company number] (”Licensor”)

and

……………….. [Address, Company number] (”Licensee”)

and

Nordic Trustee ASA, Haakon VII’s gate 1, 0116 Oslo (”Escrow Agent”)

have this ddmmyy entered into the following escrow agreement (the ”Agreement”):

# Definitions

|  |  |
| --- | --- |
| The Product | (name of software) |
| The License and Maintenance Agreement | (name of License Agreement ) of………. between the Licensor and the Licensee regarding the Licensee’s right to use the Product |
| Maintenance Agreement | (name of maintenance agreement) of ……... between the Licensor and the Licensee regarding maintenance of the Product |
| Source Code Material | The Source Code to the Product, with appurtenant documentation and description of the development environment, further described in Attachment No 1 to the Agreement. |

# Escrow

## The Licensor shall within 30 – thirty - days from the Licensor has received in return a copy of the Agreement signed by all parties provide the Escrow Agent a sealed package containing one complete and updated copy of the Source Code Material. The Source Code Material is specified in Attachment No 1.

2.2 The Licensor shall deliver the Source Code Material on a CD or in other forms of media if so agreed by with the Escrow Agent and the Licensee. The Source Code Material may not be in an encrypted form and it must be useable without submitting identification data.

2.3 The Licensor shall deliver the Source Code Material by registered mail at its own risk and cost. The Licensor may also, if so agreed with the Escrow Agent, deliver the Source Code Material by a representative, who shall properly identify him or herself to the Escrow Agent and document his and her authorisation.

# Source Code Material Upgrading

## Upon the delivery by the Licensor to the Licensee of a new version of the Product pursuant to the Maintenance Agreement or any other agreement, the Licensor shall within 30 days after such delivery provide the Escrow Agent with an upgraded version of the Source Code Material.

## Subsequent to the first upgrading of the Source Code Material the Escrow Agent shall at all times be provided with the two latter versions of the Source Code Material. If the Licensor thereafter deposits a new version in accordance with Clause 3.1, the Escrow Agent shall release to the Licensor the version of the Source Code Material then being the oldest.

# Obligations of the Escrow Agent

## The Escrow Agent undertakes to

## (a) Keep the Source Code Material in a secure place, so that discs/tapes/CDs or any other material may not be damaged due to fire, theft, vandalism etc. and so that intruders may not get access to the Source Code Material;

## (b) In writing to the Licensor and the Licensee confirm the receipt of the Source Code Material within seven days after the Source Code Material or the upgraded version of the Source Code Material is deposited. Such confirmation shall include the date when the deposit/upgrading was being made and the name of the persons representing the Escrow Agent and the Licensor;

## (c) Keep a written record of the updates of the Source Code Material being made, including the time and the name of the persons representing the Escrow Agent and the Licensor;

## and

## (d) Release the Source Code Material only if provided for in the Agreement.

# Obligations of the Licensor

## The Licensor undertakes to

## Ensure that the Source Code Material is being deposited with the Escrow Agent within the time limits set forth in Clauses 2 and 3 of the Agreement;

## For every deposit being made, state on the outside of the package, the following information:

* Deposit No.
* The names of the Licensor and the Licensee
* The date of the deposit of the Source Code Material
* Information on the complete content of the Source Code Material, cfr. Attachment No 1.

The size of the package must not exceed the following size:

31 cm x 23 cm.

## The Licensor guarantees that

## The Licensor possesses the exclusive intellectual property rights to the Source Code Material, alternatively that the Licensor is entitled according to agreement with the possessor of the intellectual property rights to enter into the Agreement, and that

## The Source Code Material consists of complete copies and otherwise is in compliance with Attachment No 1.

# Conditions to release the Source Code Material to the Licensee

## The Licensee is entitled to have the Source Code Material released from the Licensor and/or the Escrow Agent in situations mentioned in sub-clauses (a) and (b) below. The Escrow Agent undertakes to, pursuant to sub-clauses 7 and 8 below to release the Source Code Material in the same situations.

1. The Licensor in writing requests the Source Code Material to be released to the Licensee

or

(b) The Licensee in writing requests the Source Code Material to be released. The request shall state the reason for the request of release, which must be one or more of the situations described in sub-clauses (i), (ii) or (iii) below:

1. the Licensee has cancelled the Maintenance Agreement due to material default by the Licensor;

or

1. the Licensor has declared that he no longer maintains the Product, or that the Licensor has terminated his business, and consequently that it must be regarded as very likely that the Licensor no longer will maintain the Product;

or

(iii) The Licensor goes into liquidation, bankruptcy, opens debt negotiations, enters into composition arrangements of any kind or declares insolvency.

## In the event that the Escrow Agent receives a written request from the Licensee that the Source Code Material be released, cfr. Clause 6.1 (b), the Escrow Agent shall immediately forward a copy of such request to the Licensor, cfr. Clause 8.1.

The copy shall be sent to the Licensor by registered mail. In addition, the Escrow Agent shall send the copy by telefax to the Licensor.

The Licensor may change address and telefax number in writing to the Escrow Agent.

# Release of the Source Code according to Clause 6.1 (a)

## The Escrow Agent shall immediately upon receipt of a written request pursuant to Clause 6.1 (a) release the Source Code Material to the Licensee. The Source Code Material shall be released in compliance with Clause 12.4.

# Release of the Source Code according to Clause 6.1 (b)

## Unless the Escrow Agent has received a protest from the Licensor pursuant to Clause 8.2 below, the Escrow Agent shall release the Source Code Material to the Licensee within fifteen days after the copy of the Licensee’s request for release according to Clause 6.1 (b) is sent to the Licensor pursuant to Clause 6.2.

## The Source Code Material shall be released in accordance with Clause 12.4.

## In the event that the Escrow Agent within ten days after the copy of the Licensee’s request for release according to Clause 6.1 (b) is sent to the Licensor (see Clause 6.2), receives a written protest to the effect that the Source Code Material not be released as the Licensor argues that the conditions for release according to Clause 6.1 (b) are not met, the Escrow Agent shall keep the Source Code Material in escrow until there is a court ruling or enforcement order authorising the release of the Source Code Material. The court ruling or enforcement order need not be final. The Escrow Agent is not a party to such matter.

# The Licensee’s limited right to use the Source Code Material upon release

## In the event the Licensee has had the Source Code Material released in accordance with Clause 7 or 8, the Licensee is entitled to use the Source Code Material within the following limits:

## The Source Code Material may only be used to understand, maintain and rectify errors in the Product in compliance with the obligations of maintenance undertaken by the Licensor in the Maintenance Agreement. Such maintenance may only take place to enable the Licensee to continue to use the Product for the purposes and otherwise within the limits set forth in the License Agreement.

## The Licensee may not make the Source Code Material available to others than employees or contractors of the Licensee, who would need access to the Source Code Material to understand, maintain or rectify errors in the Product. The Licensee has no right to market the Product or to give a third party the right to use the Product.

## When the Licensee’s right to use the Product in accordance with the License Agreement terminates, the Licensee undertakes to return the Source Code Material immediately to the Licensor, or destroy the Source Code Material if the Licensor so chooses.

# Intellectual property rights

## Except the Licensee’s right to maintain the Product pursuant to Clause 9 above, the Agreement does not influence on the parties’ intellectual property rights to any part of the Product or the Source Code Material. The Escrow Agent is an escrow agent only and has no rights to the Product.

# Confidentiality

## The Escrow Agent undertakes to maintain any information and documentation received by it under the Agreement in confidence. The Escrow Agent further agrees not to release any such information or documentation under other conditions than those set forth in the Agreement.

## The Escrow Agent agrees to maintain the provisions of Clause 11 even after the Agreement is terminated.

# Termination of the Agreement

## The Agreement terminates if one of the following incidents occurs:

1. The Licensee in writing to the Escrow Agent terminates the Agreement;
2. The Escrow Agent releases the Source Code Material to the Licensee according to Clause 7 or Clause 8;
3. If the escrow fee is not paid within ninety days after the Escrow Agent has sent a written reminder to the Licensee, the Escrow Agent may terminate the Agreement by written notice to the Licensor and the Licensee. A payment reminder may at the earliest be sent on payment date.
4. The Licensor’s obligation to maintain the Product according to the License Agreement or the Maintenance Agreement expires.

## When the Agreement terminates in accordance with 12.1 (i) or (iii) above, the Source Code Material shall immediately be released to such third party as the Licensee and the Licensor together have appointed. When the Agreement is terminated in accordance with 12.1 (iv), the Source Code Material shall be released to the Licensor.

## In the event that the Licensee and the Licensor have not within thirty days from the Escrow Agent’s receipt of the request pursuant to 12.1 (i), or at the expiry of the time limit set forth in 12.1 (iii), jointly informed the Escrow Agent about whom the Source Code Material shall be released to, the Source Code Material shall be released to the Licensor.

## The Escrow Agent shall, at the addressee’s cost and risk, send the Source Code Material by registered mail or deliver it by hand.

# Escrow fee

## The Escrow Agent`s fee, which include an initial fee, an annual fee and a fee for Material updates, is set out in the price list available on the Escrow Agent`s website.

The Escrow Agent shall have the right to change the price list annually.

## Any applicable VAT will be charged.

## The initial fee shall be invoiced in conjunction with the entering into of the Agreement. The annual fee shall accrue as from the first anniversary of the Agreement and shall be invoiced in advance for each year on the same date and month as this Agreement has been entered into.

## The Licensor and the Licensee shall each pay one half of the escrow fee. The Escrow Agent may however seek recovery at the Licensee only, whereby the Licensee may require refund by the Licensor. In any event the Licensee is entitled to pay the Licensor’s part of the escrow fee in order to avoid termination by the Escrow Agent pursuant to 12.1 (iii), and may then require refund from the Licensor.

13.5 Regardless of the other provisions of this Agreement, the Escrow Agent is entitled to keep the Source Code Material until fees payable under this Agreement has been finally settled.

# Liability of the Escrow Agent

## The Escrow Agent shall not be liable as the accuracy, description, relevance, completeness, merchantable quality or fitness for any purpose of the Source Code Material.

## The Escrow Agent shall not be liable to determine that the Source Code Material is correct, complete, fit, functional or whether the material deposited actually is in full accordance with the description in Attachment No 1.

## The Escrow Agent shall be liable to pay damages for financial losses suffered by the Licensor and the Licensee as a result of the Escrow Agent’s negligence in performing its obligations under the Agreement. The Escrow Agent shall not be liable for any damages in excess of 100 times the annual fee, however in any event limited to NOK 500,000.- . The limitations shall not apply in case of gross negligence or wilful act.

## The Licensor and the Licensee are separately liable to pay damages for financial losses suffered by the Escrow Agent as a result of the relevant party’s negligence.

## The Licensor’s and the Licensee’s liability to pay financial losses to one another are exhaustively described in the License Agreement and the Maintenance Agreement.

# Dispute resolution, choice of law and legal venue

## Disputes arising out of or in connection with the Agreement which are not resolved amicably shall be resolved in accordance with Norwegian law and the Norwegian courts.

## Legal suits shall be served at the Oslo County Court.

# Addresses

16.1 The Licensor and the Licensee must keep the Escrow Agent informed of its respective addresses, telephone and e-mail addresses. The Escrow Agent has complied with his obligations under the Escrow Agreement if he has tried to contact the parties on the addresses etc. set forth in the Escrow Agreement or which are otherwise given to him.

**Licensor:**

Name:………………………………………..

Company number: ………………………….

Mailing address:………………………………….

Telephone number:…………………………….

Telefax number:………………………………

Contact person:…………………………………..

E-mail: ……………………………………….

**Licensee:**

Name:………………………………………..

Company number: ………………………….

Mailing address:………………………………….

Telephone number:…………………………….

Telefax number:………………………………

Contact person:…………………………………..

E-mail: …………………………………………

**Escrow Agent:**

Nordic Trustee ASA,

P.b. 1470 Vika, N-0116 OSLO

Telephone: 00 47 22 87 94 00

Telefax: 00 47 22 87 94 10

escrow@nordictrustee.com

This Agreement is executed in three original copies, one for each of the parties.

……./……../Oslo, ddmmyy

Licensor:

Signature: …………………………..

Type name: …………………………..

Position: …………………………...

Licensee:

Signature: …………………………..

Type name: …………………………..

Position: …………………………...

Escrow Agent:

Signature: …………………………..

Type name: Hans Bernhard Lind

Position: Director