|  |  |
| --- | --- |
| Danish Escrow Institute  Danish Technological Institute  Tel.: +45 72 20 14 11  Fax: +45 72 20 10 19  E-mail: escrow@teknologisk.dk | **DDI 10XXX** |

**JOINT ESCROW AGREEMENT**

BETWEEN

NAME

ADDRESS

VAT No.

(Hereinafter the Customer)

AND

NAME

ADDRESS

VAT No.

(Hereinafter the Supplier)

AND

DANISH ESCROW INSTITUTE

DANISH TECHNOLOGICAL INSTITUTE

TEKNOLOGIPARKEN

DK-8000 AARHUS C

Concerning the holding of material by the Danish Escrow Institute

**1. Escrow Agreement documents**

The Escrow Agreement comprises sections 1-14 and the following appendices:

|  |  |
| --- | --- |
| Appendix 1: | Description of the content of the escrow material |
| Appendix 2: | The protected agreement between the Customer and the Supplier |
| Appendix 3: | Contact persons |
| Appendix 4: | Inspection |
| Appendix 5: | Conditions for release |
| Appendix 6: | Release Committee |
| Appendix 7: | Special agreements concerning right of use |
| Appendix 8: | Special agreements concerning remuneration and payment |
| Appendix 9: | Subsequent supplements or changes |
| Appendix10: | Price list |
| Appendix 11: | General Terms and Conditions Accepted by Danish Technological Institute for Commission Work |

**2. Joint Escrow**

2.1 The material held in escrow is placed in joint escrow. This means that several customers share a copy of identical source material. In the event of release, copies shall be made of this material for the customer(s) entitled to it at their expense. Each depositor shall receive individual receipts and other relevant information.

**3. Material Held in Escrow**

3.1 This Escrow Agreement concerns the holding of source material specified in detail in Appendix 1.

3.2 Within one week of receiving the signed Escrow Agreement, the Supplier shall deliver the material to be held in escrow to the Danish Escrow Institute at the following address:

**Danish Escrow Institute, Kanalholmen 31-33, DK-2650 Hvidovre**

3.3 The material shall consist of the programs and the associated source text. . Both the programs and the source text shall be stored on an electronic storage medium (DVD, CD-ROM, memory stick, hard disk, etc.).

3.4 Information shall be provided concerning the name and type of compiler and any other information requested by the Customer as specified in Appendix 1.

**4. Updating**

4.1 In the event that the Supplier makes changes to the protected program at the Customer’s premises, the Supplier shall immediately update the material held in escrow as necessary. Any agreement made concerning a deadline for updates by the Supplier shall be stated in Appendix 1.

4.2 Upon receiving new material, the Danish Escrow Institute shall send notification of this to the Customer as well as an acknowledgement of receipt to the Supplier.

4.3 Notification shall be sent to the Customer and Supplier’s contact persons specified in Appendix 3.

* 1. The parties to this Escrow Agreement shall send information concerning changes of address and contact persons to the Danish Escrow Institute.
  2. The Danish Escrow Institute shall always use the last known addresses and contact persons in full discharge of its obligations to this Escrow Agreement.

**5. Inspection**

* 1. Before the source material is handed over to the Danish Escrow Institute, the Customer shall be entitled to carry out an inspection of the material as agreed with the Supplier and at his own expense. The nature of the inspection and the specific procedures are described in Appendix 4.

5.2 After the source material has been handed over to Danish Escrow Institute, the Customer shall be entitled to carry out an inspection of the material at the Customer’s own expense at all times. If the Customer requests such an inspection, Danish Escrow Institute shall notify the Supplier. The Supplier shall be entitled to take part in the Customer’s inspection.

5.3 The Customer shall pay all expenses in connection with inspection visits.

**6. Conditions for Release**

6.1 The material held in escrow shall be released to the Customer, if the Supplier or any other party whose obligations this Escrow Agreement shall ensure as specified in Appendix 1 and Appendix 2 fails to perform their contractual obligations.

6.2 The material held in escrow shall also be released to the Customer, if it can be reasonably ascertained that the Supplier or any other party whose obligations this Escrow Agreement shall ensure as specified in Appendix 1 and Appendix 2 will fail to perform their obligations in accordance with the protected agreement, for example due to bankruptcy, suspension of payments or compulsory composition.

6.3 Moreover, the material held in escrow shall be released to the Customer, if the Supplier fails to perform his obligation to update the material, cf. Section 4, and has not updated the material within 4 weeks of receiving a written demand from the Customer to this effect.

6.4 Any other conditions agreed upon for release shall be stated in Appendix 5.

**7. Release**

7.1 If the Customer is of the opinion that a condition for release as stated in Section 6 exists, he shall contact the Danish Escrow Institute in writing with a view to having the material held in escrow released.

7.2 The Danish Escrow Institute shall then contact the Supplier by both ordinary and registered mail to hear his opinion about the demand for release.

7.3 The Supplier’s response must be well substantiated and in writing, and the Danish Escrow Institute shall receive it not later than 10 calendar days after the letter concerning release (cf. 7.2) was sent.

7.4 If the Supplier consents to releasing the material or if the Supplier does not respond within the designated time, the material held in escrow shall be released to the Customer.

7.5 The Supplier can prevent the release of the material if the Supplier can prove that his obligations in relation to the Customer have been transferred to a third party that is fully subrogated to the Supplier’s obligations in relation to the Customer, including those in this Escrow Agreement.

7.6 If the Supplier opposes the release of the material and the Customer maintains his demand, the matter shall be settled by a Release Committee appointed by Danish Technological Institute.

7.7 If the demand for release is based on bankruptcy, suspension of payments, compulsory composition or similar on the part of the Supplier, the Danish Escrow Institute shall contact the trustee in bankruptcy, administrator, receiver or similar with a view to ascertaining whether the estate wishes to be subrogated to the protected agreement. If this is not the case, the material held in escrow shall be released.

**8. Release Committee**

8.1 If the parties have special requests as to the composition, powers, procedure, etc., of the Release Committee, this shall be specified in Appendix 6.

8.2 In so far as no position have been taken in this respect, a Release Committee shall be appointed consisting of three impartial members with thorough knowledge of computing and computer law. The members shall be appointed by Danish Technological Institute in co-operation with the Danish Institute of Arbitration or the Danish Computing Association, if required. If the services or the Danish Institute of Arbitration or the Danish Computing Association are used, the Customer and/or the Supplier shall pay the costs of the procedure.

8.3 The Release Committee shall immediately convene a meeting with the parties. The Release Committee shall make its decision based on statements made by the parties, available contract material and any examinations deemed necessary by the Release Committee.

8.4 In general, the Release Committee shall determine its own procedures. If one of the parties requests it, the Release Committee’s well-substantiated written decision shall be made as quickly as possible. Any specific deadlines for the Release Committee’s work shall be stated in Appendix 6.

8.5 The Release Committee shall decide whether one or more of the conditions for release in accordance with this Escrow Agreement and associated appendices has been fulfilled.

8.6 In making its decision, the Release Committee shall determine who of the parties to this Escrow Agreement shall pay the costs of the case, including any legal costs. In distributing the costs, the Release Committee shall take into account whether the matter was brought before the Release Committee with good reason.

8.7 The Release Committee shall also decide when its decision must be complied with. However, the decision of the Release Committee should normally be complied with no later than 14 calendar days after the decision was made.

8.8 Unless otherwise stated in Appendix 6, the decision of the Release Committee shall be final.

**9. Right of Use**

9.1 Unless otherwise stated in Appendix 7, the Customer may only use the released material for his own purposes and only to the extent that it is necessary to maintain and further develop the program’s functions as it can be considered guaranteed and assumed in the protected agreement, cf. Appendix 2.

**10. Payment**

10.1 The payment to the Danish Escrow Institute for this Escrow Agreement shall be an opening fee of DKK 14,500. In addition, an annual fee of DKK 4,000 (for holding up to up to 8 DVDs, CD-ROMs, memory sticks or the like) or DKK 5,000 (for holding a box sized 70 x 40 x 40 cm) shall be paid. Subsequent agreements shall be invoiced at DKK 7,250.

10.2 The Danish Escrow Institute shall charge half of the opening fee at the time of forwarding the first draft of this Escrow Agreement, and the remainder shall be charged when this Escrow Agreement is signed and returned by the parties.

10.3 The annual fee shall cover one annual update. For further updates of the escrow material, DKK 2,000 shall be paid for each additional update.

10.4 The annual fee shall be charged in advance every 1 August. The first payment shall, however, be made at the time the Escrow Agreement is signed and shall amount to the proportion of the fee up to 1 August 20XX.

10.5 The annual fee and any other fees may be regulated annually on 1 July with effect from 1 August, but can always be regulated with 3 months’ notice.

10.6 The Customer shall pay DKK 1,500 per hour for inspection visits to cover the Danish Escrow Institute’s expenses.

10.7 All prices are exclusive of Danish VAT.

10.8 Unless otherwise stated in Appendix 8, the Customer shall be invoiced for the fee.

10.9 If the invoices of the Danish Escrow Institute have not been paid after two written reminders, the Danish Escrow Institute shall be entitled to terminate the Escrow Agreement. Copies of these reminders shall be sent simultaneously to the Supplier and the Customer, giving the Customer the opportunity to protect his interests.

10.10 If the Escrow Agreement is terminated, the Danish Escrow Institute shall return the material in full discharge of its obligations to the Supplier’s address. If the Supplier cannot be found, the material shall be destroyed. The Danish Escrow Institute can demand that the defaulting party pay any costs resulting from the termination.

10.11 See also the price list of the Danish Escrow Institute in Appendix 10.

**11. Liability of the Danish Escrow Institute**

11.1 In no way does the Danish Escrow Institute guarantee for the content or the applicability of the material held in escrow.

11.2 Danish Escrow Institute shall only be liable for the direct loss that arises for the Customer or the Supplier resulting from wrongful or incorrect release or retention of the source material. Thus, Danish Escrow Institute shall not be held liable for losses on operations, loss of earnings or any other indirect losses.

11.3 Release or refusal to do so which complies with the Release Committee’s decision shall never be considered wrongful or incorrect.

11.4 The Danish Escrow Institute’s liability shall not exceed DKK 500,000 per release, whether or not several parties are protected by the same Escrow Agreement.

11.5 The Danish Escrow Institute shall not be liable for damage to or destruction of the source material while it is in the custody of the Danish Escrow Institute. Consequently, either the Customer or the Supplier shall be responsible for taking out appropriate insurance against damage to or destruction of the material held in escrow.

11.6 The Supplier guarantees that he has the right to transfer the material held in escrow to the Danish Escrow Institute and has the authority to hand over the material in accordance with the terms of this Escrow Agreement.

11.7 The Danish Escrow Institute can demand that the Supplier and the Customer can be held jointly and severally liable for all claims that arise vis-à-vis the Danish Escrow Institute in the event that the Supplier does not have the necessary rights to the material held in escrow.

**12. Termination of the Escrow Agreement**

12.1 This Escrow Agreement can be terminated at any time by the Customer and by the Customer and the Supplier jointly.

12.2 Termination shall be in writing with 3 months’ notice to the end of a calendar month.

12.3 The Escrow Agreement can also be terminated under the terms of the protected agreement.

12.4 If the Supplier and the Customer disagree as to whether the Supplier is entitled to terminate the agreement, the Escrow Agreement cannot be terminated until the Supplier’s right to terminate has been documented by a final judgement, settlement or arbitration award.

12.5 The Danish Escrow Institute can terminate the Escrow Agreement at any time with 6 months’ written notice to the end of a calendar month. In the event that the Danish Escrow Institute terminates the Escrow Agreement, the Danish Escrow Institute shall as far as possible help the parties to find a new place of escrow.

12.6 Upon expiry of the Escrow Agreement, the material held in escrow shall be returned in full discharge of the Danish Escrow Institute’s obligations to the last known address of the Supplier. If the Supplier cannot be found, the Danish Escrow Institute shall destroy the material. The Danish Escrow Institute can demand that the parties to this Escrow Agreement cover related expenses.

**13. Applicable Law and Venue**

13.1 Any disputes and claims arising from this Escrow Agreement that involve the Danish Escrow Institute shall be settled in accordance with Danish law.

13.2 If one of the parties to this Escrow Agreement takes steps to institute legal proceedings against another party to this Escrow Agreement and the dispute arises from this Escrow Agreement and involves Danish Escrow Institute, the case shall be brought before and settled by the Court in Glostrup, Denmark.

**14. Signature**

This Escrow Agreement has been prepared and signed in three identical copies of which each party retains one copy.

|  |  |  |
| --- | --- | --- |
| For the Supplier |  | For the Customer |
| Date: |  | Date |
|  |  |  |

|  |
| --- |
| For the Danish Escrow Institute |
| Date: |
|  |

**Appendix 1**

##### Content of the escrow obligation

*A description of the Supplier’s service is enclosed*

**Appendix 2**

##### The protected agreement

*A copy of the protected agreement is enclosed.*

**Appendix 3**

##### Contact persons, etc.

##### Contact person at the Supplier:

|  |  |
| --- | --- |
| Company: |  |
| Contact person: |  |
| Address: |  |
| VAT-no.: |  |
| Tel.: |  |
| Telefax: |  |
| Mobile: |  |
| E-mail: |  |
| Office hours: |  |

##### Contact persons at the Customer:

|  |  |
| --- | --- |
| Company: |  |
| Contact person: |  |
| Address: |  |
| VAT-no.: |  |
| Tel.: |  |
| Telefax: |  |
| Mobile: |  |
| E-mail: |  |
| Office hours: |  |

##### Invoice to be sent to:

|  |  |
| --- | --- |
| Company: |  |
| Contact person: |  |
| Address: |  |
| VAT-no.: |  |
| EAN-number:  (if applicable) |  |
| Tel.: |  |
| Telefax: |  |
| Mobile: |  |
| E-mail: |  |
| Office hours: |  |

**Appendix 4**

##### Inspection

**Appendix 5**

##### Conditions for release

**Appendix 6**

##### Release Committee

1. Specially appointed members, if any:

Name …………………

Name …………………

Name …………………

1. Special procedures:
2. Special provisions concerning remuneration:
3. Special deadlines:

**Appendix 7**

##### Special agreements concerning right of use

# Appendix 8

##### Special agreements concerning remuneration and payment

# Appendix 9

##### Subsequent supplements or changes

# Appendix 10

## Price List – Joint Escrow

|  |  |
| --- | --- |
|  | **DKK** |
| Opening fee |  |
| Conditions for opening joint escrow:   * identical deposit * the customer is liable for the cost of copying the material in the event of a release |  |
|  |  |
| Opening fee (upon signing the escrow agreement) for basic agreement and opening of escrow. DKK 7,250 shall be invoiced upon sending the first draft of the Escrow Agreement! | 14,500 |
| Annual Subscription |  |
|  |  |
| Annual subscription fee for minimum two customers, each: |  |
| 1. up to 8 DVDs, CD-ROMs, memory sticks or the like 2. one box (70 x 40 x 40 cm) | 4,000  5,000 |
| The annual subscription fee includes one free update per customer: |  |
| First update: | Free of charge |
| Additional updates per customer: | 2,000 |
|  |  |
| Inspection of the material held in escrow, per hour | 1,500 |

|  |  |
| --- | --- |
| **Draft of Escrow Agreement:** |  |
| The first draft of the Danish Escrow Institute's Escrow Agreement is included in the opening fee. Subsequent modifications, per forwarded draft, per hour | 1,200 |
|  |  |
| **Consultancy Services:** |  |
| Consultancy in connection with submitting quotations, specification and inspection of source material, hand-over transactions and legal assistance is provided in accordance with the *General Terms and Conditions of Danish Technological Institute* (see Appendix 11), per hour | 1,200 |
|  |  |
| ***All prices are exclusive of Danish VAT*** |  |
|  |  |
| ***Prices are subject to change*** |  |

**Appendix 11**

**General Terms and Conditions regarding Commissioned Work Accepted by Danish Technological Institute\***

**General stipulations**

These General Terms and Conditions shall apply to all commissioned work performed by the Danish Technological Institute (“the Institute”) for a contract party (the “customer”), including, but not limited to, counselling, instruction, information retrieval and communication, testing, research, sale and leasing. Unless otherwise agreed, these General Terms and Conditions shall also apply to any other and subsequent agreements between the Institute and the customer. Unless specifically accepted in writing by the Institute, any deviating provisions or provisions to the contrary contained in the order placed by the customer or in his acceptance shall not apply.

However, the Institute’s “General Terms and Conditions regarding Certification, Inspection or Approval Bodies Associated with the Danish Technological Institute” shall apply to commissioned work relating to certification, inspection or approval schemes.

**1. Scope of commissioned work**

1.1 The nature, contents and financial conditions of the commissioned work shall be stated in a written agreement. Any amendments to the agreement shall be in writing.

1.2 Time schedules, price estimates, etc. are approximate unless otherwise agreed in writing. If the Institute foresees major delays or budget overruns compared to the agreed terms or material obstacles to the performance of the commissioned work, the customer shall be informed thereof, following which he shall be entitled to change or stop the work, cf. clause 6.1.

1.3 The Institute shall be entitled to a fee for work performed regardless of whether the results expected by the customer are achieved, unless it has been agreed in writing between the parties that the Institute’s fee is contingent upon the achievement of concrete, specified results.

1.4 The Institute shall be entitled to have commissioned work performed by a sub-contractor.

**2. Professional discretion**

2.1 The Institute will observe customary professional discretion with respect to disclosure of the performance of commissioned work and with respect to any agreements. A special agreement in writing shall be concluded if the customer requires secrecy as such, for example regarding know-how of the customer that may come to the knowledge of the Institute during the performance of commissioned work.

2.2 If any test or development work leads to results of interest to the general public, the Institute may publicly announce such results unless otherwise agreed in a secrecy agreement as mentioned under clause 2.1.

2.3 When the Institute undertakes work that involves an assessment of a service provided by a third party, the customer accepts and understands that the Institute may approach such third party and other relevant bodies in order to obtain information for use in performing the work.

2.4 The Institute shall at any time be entitled to pass on information, which the Institute is under a statutory obligation to disclose.

2.5 If, in the course of performing commissioned work, the Institute becomes aware of factors that in the opinion of the Institute may cause material damage to health or environment, the Institute may, if required, inform the customer thereof. In the event that the customer does not, as quickly as possible, take the steps necessary to prevent or limit the risk of material damage to health or environment, the Institute shall, notwithstanding any separate agreement on discretion or secrecy, be entitled to pass on such knowledge to the relevant authorities.

**3. Reference to results, etc.**

3.1 The customer may only publish the reports of the Institute in their entirety.

3.2 The customer may not mention or refer to the Institute or the Institute’s employees for advertising or marketing purposes unless the Institute has granted its written consent in each case. Such consent shall lapse if the customer stops or postpones the work, cf. clause 6.1.

3.3 Course material issued by the Institute may not be copied or duplicated. Course material on loan from the Institute shall remain the property of the Institute.

3.4 The Institute shall be entitled to demand that the customer returns reports, etc. prepared by the Institute together with the pertinent documents if the Institute discovers any errors or defects in such material.

**4. Rights relating to the results of the commissioned work**

4.1 The tangible material produced by the Institute in connection with commissioned work and the right to utilise such material, shall be the property of the customer.

4.2 Know-how and other intangible property rights developed by the Institute or ascertained by the Institute in connection with performing the work shall be the exclusive property of the Institute.

**5. Fees and terms of payment**

5.1 Commissioned work shall be performed according to account rendered based on the hourly rates from time to time fixed by the Institute including transport charges and other outlays.

5.2 In respect of long-term work, the Institute shall be entitled regularly to adjust the hourly rates stated under 5.1. The customer shall receive notice of such adjustments 30 days prior to the date on which they come into force.

5.3 The Institute shall be entitled to issue invoices on account once a month for work performed in the past month.

5.4 In case of overdue payment of balances due to the Institute, interest shall be charged at the rate of 1.5% for each commenced period of one month.

**6. The right to change and cancel orders**

6.1 If the customer issues instructions to stop or postpone the work, cf. clause 1.2, work already performed shall be paid for according to invoice, just as the customer shall reimburse the Institute for any costs incurred in connection with the cancelled or postponed work that the Institute has already undertaken to pay, such as expenses to a third party, special equipment or premises, etc.

6.2 Moreover, the nature or scope of commissioned work may only be changed subject to the written consent of the Institute.

**7. Liability**

7.1 The Institute shall be liable towards the customer for any errors and negligence in connection with the performance of the work pursuant to the general rules of compensation of Danish law, subject to such limitations as follow from clauses 7.2 to 7.12. the Institute shall in no event be liable for circumstances or events causing a loss that are not attributable to any errors or negligence on the part of the Institute.

7.2 If the performance of commissioned work is stopped or postponed (cf. clause 6), the Institute shall not be liable for any defects or errors in work already performed.

7.3 The Institute shall not be liable for injury or damage arising in connection with the use of counselling provided by the Institute or test or control reports prepared by the Institute if the use thereof is outside the scope of the commissioned work or the specified objects.

7.4 If the Institute’s work is not concluded with a report or the delivery of a service, or if the service provided consists of a statement in which it is specified that it is based on an estimate or assessment, the Institute shall not be held liable unless the Institute is guilty of gross negligence.

7.5 Unless the Institute has issued a written warranty for the completion of the work at a specific time, the Institute shall not accept liability for loss or damage caused by delays in the performance of commissioned work.

7.6 The Institute shall not be held liable for tortious acts on the part of any one of the Institute’s sub-contractors, unless such sub-contractor has been appointed by the Institute without being proposed or approved by the customer.

7.7 In case of joint liability between the Institute and one or more parties, the Institute shall only accept liability for such proportion of the loss suffered by the customer as is accounted for by the share of the overall liability attributable to the Institute.

7.8 If the Institute has undertaken, on behalf of the customer, to verify that services provided by a third party to the customer are according to contract, the Institute shall only be held liable for loss or damage that the customer might suffer owing to the Institute’s failure to point out, in due time, that a specific service is not according to contract. Thus, the Institute’s liability shall be subordinated to the claim for compensation that the customer may make against the third party in question, and the Institute’s liability shall moreover by subject to the other limitations stated in this clause 7.

7.9 If the Institute has received samples or equipment from the customer, the Institute shall exclusively be held liable for loss of or damage to such samples or equipment if an agreement in writing has been made with the customer to return such samples and equipment. In addition, in such event, the Institute shall only be held liable if it can be substantiated that the Institute is guilty of gross negligence, and the compensation can in no event exceed the cost of the material necessary for manufacturing the samples or equipment in question. If the return of samples and equipment has not been agreed upon, the Institute will only keep such samples and equipment for a period of up to six months after the completion of the work.

7.10 The Institute cannot be held liable for more than the direct loss suffered by the customer. Thus, the Institute shall not be held liable for losses on operations, loss of earnings or any other indirect losses. The Institute’s total liability shall not exceed DKK 1,000,000 for each individual claim except for bodily injury according to Danish law.

7.11 If any third party holds the Institute liable for bodily injury or damage to property caused by work performed by the Institute, including, but not limited to, product liability, the customer shall be obliged to indemnify and hold the Institute harmless from any claim exceeding the amount of any claim(s) that can be brought against the Institute pursuant to the provisions of this clause 7. The Institute may request the customer to defend any such claim on behalf of the Institute.

7.12 The Institute cannot be held liable for claims regarding loss, damage or injury that have not been made in writing within three years after delivery by the Institute of the service in respect of which the claim is made. In addition, the Institute’s liability is contingent upon the customer complaining in writing as soon as he has become aware of, or should have become aware of, the existence of a potential claim for compensation against the Institute. Notwithstanding the said time limit of three years, the Institute shall not be liable for any damage or injury that was impossible to foresee in view of the know-how and technology available at the time of the performance of the commissioned work. 2/2

7.13 If the Institute is prevented from performing its obligations under the agreement as a result of extraordinary external factors which should not have been foreseen by the Institute at the time when the agreement was concluded (force majeure), this will not be deemed to constitute breach.

**8. Disputes**

8.1 Any dispute or controversy arising between the Institute and the customer shall be settled according to Danish law by the Court in Glostrup, Denmark, however, if the case is within the jurisdiction of the Danish Maritime and Commercial Court, the case will be brought before the said Court.

Marts 2015

\* In Danish, the name “Teknologisk Institut” is used.