**OUTSOURCING AGREEMENT**

***- ICT-toimintojen ulkoistamissopimus***

Sopimuspohja tehty neutraalista näkökulmas­ta tilanteeseen, jossa yhtiö ulkoistaa eräitä ICT-toimintojaan (software ja hardware) ja loppuasiakkaiden myyntitoimintojaan ICT-palveluyhtiölle (tässä aluksi vuodeksi) ja maksaa käytetyistä palveluista ICT-palveluyhtiön hinnaston mukaisesti.

Sopimuspohjan kaikki kohdat tulee tarkistaa ja muuttaa vastaamaan käytännön tilannetta; on myös huomioitava, että yhden sopimuskohdan muuttaminen yleensä vaikuttaa myös sopimuksen muihin lausekkeisiin ja lisämuutokset ovat tällöin tarpeen.

**HUOM.! Tämä sopimuspohja ei sovellu käytettäväksi käytännön tilanteisiin ilman sopimusjuridisen asiantuntijan tarkistusta ja korjauksia**.

 *DRAFT 0.1 - January \_\_, 20\_\_*

**OUTSOURCING AGREEMENT**

This Outsourcing Agreement (the "Agreement"), dated as of January 1, 20\_\_ (the "Effective Date"), is between Firma Oy ("Firma"), a Finnish corporation, with offices at Pääkatu 1, 00100 Helsinki and ICT Service Company Oy ("SC" or "Manufacturer"), a Finnish corporation, with offices at Sivukatu 2, 00100 Helsinki. Firma and SC may be referred to individually as a "Party" and together as the "Parties."

**RECITALS**

**WHEREAS**, Firma designs, develops, manufactures and sells certain software products and services and other products;

**WHEREAS** SC is a custom manufacturer of certain network servers and appliances and a provider of certain value-added services and support;

**WHEREAS**, Firma desires to enter into an outsourcing agreement through which SC will configure and deliver certain hardware and software to Firma's customers on behalf of Firma and SC will customize and integrate Firma's specifications onto such hardware and software products.

**ARTICLE 1 - DEFINITIONS**

1.1 "Acceptance Period" has the meaning given such term in Article 3.3(b).
1.2 "Bill of Materials" means a complete and detailed list of all components, materials, and other Items including, but not limited to, chasses, motherboards, processors, disk drives, power supplies, cables and mounting brackets that are necessary to manufacture a Finished Product.
1.3 "Configuration Services" means the configuration of either the Firma Supplied Hardware or, as the case may be, the SC Custom Manufactured Hardware, including, without limitation, the installation of the Firma Technology and/or the Third Party Technology, each in pursuant to the Firma Specifications.
1.4 "Customer" means a third party who is contract directly or indirectly with Firma to purchase the Products.
1.5 "Order Form" means a mutually executed form used by Firma to order Finished Products.
1.6 "Finished Products" means either the Firma Supplied Hardware or the SC Custom Manufactured Hardware that has undergone the Configuration Services.
1.7 "SC Custom Manufactured Hardware" means the physical components necessary to assemble a Finished Product, which components are procured and assembled by SC.
1.8 "Firma Supplied Hardware" means the physical components necessary to assemble a Finished Product, which components are purchased by Firma from a third party and delivered to SC under this Agreement to undergo the Configuration Services.
1.9 "Firma Technology" means the Firma's proprietary network security software.
1.10 "Technology" means the Firma Technology and the Third Party Technology.
1.11 "Third Party Technology" means any third party software programs or tools, including any open source programming, with which the Firma Technology interacts when such Firma Technology is used in accordance with Firma's documentation.

**ARTICLE 2 - FINISHED PRODUCTS**

2.1 During the Term of this Agreement, Firma may request, and SC hereby agrees to (i) perform certain Configuration Services, (ii) produce certain Finished Products (iii) and deliver such Finished Products to the Customers, in accordance with the terms and specifications set forth in an applicable Product Addendum. Each Product Addendum shall also include:
(a) a Bill of Materials;
(b) a mutually agreed upon description of the applicable. Technology that is required;
(c) Specifications;
(d) prices and pricing terms for the Configuration Services and/or the Finished Product;
(e) any other terms and conditions related to the Finished Products that the parties may deem appropriate.

2.2 Delivery of Technology. Upon the parties' execution of an Order Form, or as soon thereafter as is reasonably possible, Firma will provide SC with all the Technology necessary to perform its services hereunder.

2.3 Project Management. Each party will designate two contact persons who will be primarily responsible for coordinating and overseeing such party's activities under this Agreement; one of whom will act as a primary commercial contact and one of whom will act as a technical liaison with the other party for purposes of administering this Agreement.

2.4 Maintenance and Support. To the extent available, SC shall offer maintenance and/or support services for the Finished Products to Customers. All maintenance and support agreements shall be directly between SC and Customers.

**ARTICLE 3 - ORDERING**

3.1 Order Fulfillment. All orders shall be fulfilled in strict accordance with the applicable Order Form. The terms and conditions of this Agreement shall apply with respect to all orders. Notwithstanding the above, the service level requirements set forth in Exhibit B shall apply with respect to Finished Products delivered to Customers by SC.

3.2 Forecasting. Firma will use its reasonable commercial efforts to provide a rolling forecast (the "Forecast") to SC so that the day-to-day demand can be managed for the first 2 months of every quarter. On or before the 15th day of the 3rd month of every quarter Firma will forecast pre-build inventory to support quarter end orders which will detail the Appliances to be manufactured by SC and purchased by Firma customers. SC understands that the Forecast is an estimate of quantities required. Firma will have no minimum volume commitment.

3.3 Delivery and Acceptance. The delivery and acceptance processes for the Finished Products will be as follow, unless otherwise set forth in the applicable Product Addendum.

(a) Delivery. SC will deliver the Finished Products on or before the delivery date specified in the applicable Order Form or Order Change Notice; provided, however, that SC will promptly notify Firma in writing of SC's anticipated inability to meet, in whole or in part, any agreed-upon delivery date. SC will pack and label all Finished Products shipments in such a way as to be acceptable to carriers and in accordance with good commercial practices. Title and risk of loss or damage to the Finished Products will pass to Firma upon SC's delivery to Shipper. Firma will bear any and all shipping and handling costs.

(b) Acceptance. After receipt of a Finished Products shipment, Firma or its Customer shall have thirty (30) days (the "Acceptance Period") in which to inspect and accept or reject the shipment for conformity to the applicable Specifications. If Firma determines that any Finished Products fails to conform to the applicable Specifications, Firma will be entitled to reject the Finished Products during the Acceptance Period by giving SC written notice containing sufficient details of such nonconformity; provided, however, that any unit not rejected by written notification to SC within the Acceptance Period will be deemed accepted. As SC's sole and exclusive obligation for any rejected Finished Products, SC will provide a return material authorization number and ship a newly manufactured replacement Finished Products to Firma or its Customer. In the event of a miscount in a delivery, Firma will notify SC of such miscount within five (5) days after Firma's or its Customer's receipt of such delivery and such miscount will not be a basis for rejection; provided, however, that in the case of an over-shipment, Firma or its Customer will be entitled to return, at SC's expense and risk of loss, any units in excess of the quantities ordered by Firma’s; and in the case of an under-shipment, SC will promptly ship the remaining balance of ordered Finished Products units.

3.4 Specification Changes. During the term of this Agreement, Firma may request changes to the Specifications for the Configuration Services and/or Finished Products (each, a "Change") by delivering to SC a written engineering change notice (an "ECN") describing the changes and the proposed effective date of such changes. Within five (5) business days following receipt of an ECN, SC will advise Firma in writing regarding any change in prices or delivery schedules resulting from the ECN. If Firma elects to proceed with such change, Firma will notify SC of such election in writing (a "Change Order"). If SC does not receive written confirmation of Firma's election to proceed with the Change within thirty (30) days following Firma's receipt of the change in price in delivery, if any, on account of such ECN, the ECN will be deemed cancelled.

**ARTICLE 4 - INTELLECTUAL PROPERTY RIGHTS**

Pre-existing Rights. Neither this Agreement, nor each party's performance hereunder, will give or be construed to convey any ownership interest in or rights to the intellectual property rights in the Technology to SC. All intellectual property rights that are owned or controlled by Firma or its licensors at the commencement of this Agreement will remain under the ownership or control of such party throughout the term of this Agreement and thereafter.

**ARTICLE 5 - PRICING AND PAYMENT**

5.1 Pricing. Firma will pay SC the price for the Configuration Services and/or Finished Goods as set forth in the applicable Product Addendum. Any related services will be provided to Firma at SC's standard, burdened time and materials costs. Prices and business in general will be reviewed by both parties on a quarterly basis.

5.2 Payment Terms. The purchase price for the Configuration Services and/or Finished Products will be invoiced upon shipment and is due thirty (30) days from date of receipt of invoice. Firma will be responsible for paying any applicable sales tax, excise tax or value-added tax on the purchase of Finished Products hereunder.

**ARTICLE 6 - WARRANTIES**

6.1 SC represents and warrants to Firma only that, for a period of one (1) year after Firma's or its Customer accepts the Finished Products (the "Warranty Period"), each Finished Products will be free from defects in materials and workmanship and will perform in accordance with its applicable Specifications. All Configuration Services shall be performed using generally accepted industry standards. Firma or its Customers may return defective units at any time to SC for repair after receiving a "Return Material Authorization" from SC. This foregoing warranty does not apply to any Finished Products that have been subject to misuse, unauthorized modification, neglect, improper testing or installation, attempts to repair, accident, flood, fire, radiation or other hazard. Moreover, SC warrants the materials used to manufacture the Finished Goods via SC's Advanced Replacement Warranty Agreement which is described in Exhibit A and incorporated herein by reference.

6.2 Each party warrants that: (a) it has the right to enter into this Agreement and to perform its obligations hereunder; and (b) its products, services, trademarks, and marketing and sales materials operate in conformance with their specifications and are free from any rightful claim of infringement of any patent, trademark, mask work, copyright, trade secret or other intellectual property or other right of a third party.

6.3 DISCLAIMERS. IN CONNECTION WITH THIS AGREEMENT, AND EXCEPT AS OTHERWISE PROVIDED IN A CUSTOMER AGREEMENT, THE WARRANTIES AND INDEMNITIES STATED HEREIN ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OR INDEMNITIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**ARTICLE 7 - TERM AND TERMINATION**

7.1 Term. This Agreement shall become effective as of the Effective Date and shall remain in effect for one (1) year. This Agreement shall renew automatically at the end of the prior term for an additional year, unless either party notifies the other of its intention not to renew at least thirty (30) days prior to the end of the then-current term.

7.2 Termination. Either party may terminate this Agreement upon notice in writing to the other in the event that such other party shall breach or be in default of any of the covenants, obligations, warranties, representations, terms or conditions of this Agreement and (if capable of cure) such other party fails to cure such breach or default within thirty (30) days after written notice thereof from the party not in default. Such notice shall provide in reasonable detail the basis upon which the breach is claimed. Firma may terminate this agreement for convenience with sixty (60) days’ notice.

7.3 Effect of Termination. Expiration or termination of this Agreement shall not relieve the parties of any obligations due at the time of such expiration or termination, nor shall such expiration or termination prejudice any claim of either party accrued on account of any default or breach by the other. Upon expiration or termination of this Agreement: a) each party shall immediately return to the other party, if requested to do so, or destroy, all promotional materials and all Confidential Information supplied by the other party; b) the obligations of the parties under this Agreement which by their nature would continue beyond the expiration or termination of this Agreement shall survive any expiration or termination of this Agreement; c) all customer agreements then in force will remain in effect and all payments to SC and Firma will continue under such agreements until such customer agreements are terminated.

ARTICLE 8 - INDEMNITY

SC shall defend and indemnify Firma and its respective officers, directors and employees, successor and assigns against all claims, actions, damages, losses, and expense (including paying all reasonable attorneys' fees and costs of litigation) (i) to the extent based upon a claim that the manufacturing methods used by SC to manufacture the Finished Products or the Configuration Services infringe or misappropriate any intellectual property rights of a third party and SC will pay all costs and damages incurred by Firma that are attributable to any such claim or agreed to in settlement of any such claim, (ii) arising from any third party claim for damage or injury, including death, to person or property which arises from a manufacturing defect in an Finished Products or (iii).arising from the negligence or willful misconduct of SC or any of its respective employees, agents, or subcontractors, as the case may be.

**ARTICLE 9 - LIMITATION OF LIABILITY**

IN CONNECTION WITH THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS, REVENUE, DATA, OR USE, INCURRED BY EITHER PARTY OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT, IN ANY WAY ARISING FROM EITHER PARTY's PERFORMANCE OR NONPERFORMANCE OF THIS AGREEMENT, EVEN IF THE OTHER PARTY OR ANY OTHER PERSON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS ARTICLE 10 SHALL NOT APPLY TO SC's OBLIGATIONS UNDER ARTICLE 9 OF THIS AGREEMENT.

**10. CONFIDENTIALITY**

10.1 Each party acknowledges that the other party may disclose certain technical, financial, or business information that such other party considers to be confidential and proprietary, including, without limitation, the names and contact information of current and prospective customers, technical data, or know-how of either party and any information, technical data, or know-how derived from the information, technical data, or know-how of either party, all mailing lists, proprietary data, product designs, product plans, capabilities, research, specifications, algorithms, program code, software systems and processes, hardware configuration information, information regarding existing and future technical, business and marketing plans and product strategies, finances, and the identity of actual and potential customers and suppliers ("Confidential Information"), and that the unauthorized use or disclosure of any such Confidential Information by the party using such Confidential Information (the "Receiving Party") would cause irreparable financial and other damages to the disclosing party (the "Disclosing Party"). During the Terms and for a period of three (3) years following termination, the Receiving Party agrees not to disclose to any third party, use or duplicate any Confidential Information of the Disclosing Party, except as expressly permitted in this Agreement. The Receiving Party will limit the disclosure of all such Confidential Information to those of its employees and agents who have a need to know such Confidential Information for the performance of this Agreement. The Receiving Party further agrees to take all reasonable measures to maintain the confidence of all such Confidential Information in its possession or control, which measures will in no event be less than the measures that the Receiving Party takes to protect its own confidential and proprietary information of similar importance.

10.2 Confidential Information will not include information that: (a) is in or enters the public domain without breach of this Agreement; or (b) the Receiving Party lawfully receives from a third party without restriction on disclosure and without breach of a nondisclosure obligation; or (c) the Receiving Party develops independently, which it can prove with written evidence; or (d) Information that the Receiving Party is required by law or regulation to disclose.

10.3 The terms and conditions of this Agreement are confidential and shall not be disclosed to any third party by either party without the prior, written consent of the other.

**ARTICLE 11 - NON-SOLICITATION OF CUSTOMERS**

11.1 SC agrees that for a period beginning on the Effective Date and ending one year after the termination of this Agreement, SC shall not, directly or indirectly (except with the written consent of Firma) (i) promote, market, or sell any product (hardware or software) to any identified third party that SC knows is a Customer or someone who Firma has provided a written quote (a "Prospective Firma Customer"), or (ii) solicit any identified third party that SC knows is a Customer or Prospective Firma Customer for the purpose of selling such products (hardware or software), or (iii) advertise, promote, market or sell any products (hardware or software) to any identified third party that SC knows is a Customer or Prospective Firma Customer. Neither SC nor any of its employees or agents shall have any contact of any kind with any Customer to whom Finished Product(s) are being provided, other than as is directly necessary for the provision of the Finished Product(s) to such Customer hereunder. Nothing in this Article shall prevent or preclude SC from contact with a Customer or Prospective Firma Customer if (i) SC had a bona fide pre-existing commercial relationship with the Customer or Prospective Firma Customer prior to the Effective Date; or (ii) the third party is not a Customer but is a Prospective Firma Customer as a consequence of having issued a public tender for Firma's products or services; or (iii) the Customer is contacted by a SC channel partner or SC technology partner independently and not through information supplied by SC; or (iv) the Customer or Prospective Firma Customer contacts SC due to a general advertising or marketing campaign which is not directed at such Customer or Prospective Firma Customer

**ARTICLE 12 – INSURANCE**

12.1 During the term of this Agreement, SC shall maintain any insurance required by law and, to the extent not so required, the following insurance:
(a) Worker's Compensation insurance and Employer's Liability insurance for its employees which shall fully comply with the statutory requirements of all applicable state and federal laws;
(b) Commercial General Liability Insurance, including contractual liability, products liability and completed operations coverage, premises-operations, broad-form property damage, independent contractors, personal injury) with limits of at least EUR 1.000.000 for bodily injury, including death, to any one person, EUR 1.000.000 as a result of any one occurrence, and EUR 1.000.000 for each occurrence of property damage;
(c) Professional Liability (Errors and Omissions) insurance, with limits of not less than EUR 1.000.000 per occurrence; and
(d) Umbrella Liability Insurance coverage with a minimum combined single and aggregate limit of EUR 3.000.000.

12.2 SC shall furnish Firma with certificates and/or adequate proof of the foregoing insurance. Firma shall be named as an additional insured on the insurance policies referred to in clause (b),(c) and (d) above. Upon request by Firma, all the required Insurance policies shall contain a provision stating Firma's name and address and shall require the insurer to notify Firma in writing at least thirty (30) days prior to cancellation of, or any material change to, the policies.

**ARTICLE 13 – MISCELLANEOUS**

13.1 Assignment. The rights and/or obligations contained in this Agreement may not be assigned, delegated or otherwise transferred by either party (except to a direct or indirect parent or subsidiary, or purchaser of all or substantially all the assets of such party) without the prior written approval of the other party, provided, however that either party may assign this agreement in connection with a change of control or a sale of all or substantially of the assets of either party. No assignment or delegation shall relieve either party of liability for its obligations hereunder.

13.2 Governing Law. This Agreement shall be governed by the laws of Finland.

13.3 Waiver. No failure or delay by either party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or future exercise thereof or the exercise of any other right, power or privilege hereunder.

13.4 Severability. In case any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby and the parties will begin negotiations for a replacement of the invalid, illegal or unenforceable provision.

13.5 Relationship Between Parties. In all matters relating to this Agreement, each party will act as an independent contractor. Neither party will represent that it has any authority to assume or create any obligation, express or implied, on behalf of the other party, nor to represent the other party as agent, employee, or in any other capacity.

13.6 Notices. All notices required to be sent hereunder shall be in writing, sent to the addresses above with a copy to legal counsel at the same address, or to such other address as a party may designate in writing as set forth herein, and shall be deemed to have been given: (i) upon delivery, if delivered personally, by electronic mail with confirmed receipt, or if sent by facsimile with simultaneous confirmation copy; or (ii) two (2) days after the date of deposit with an internationally recognized overnight courier.

13.7 Force Majeure. No delay, failure, or default in performance of any obligation of either party hereunder shall constitute a breach of this Agreement to the extent caused by Force Majeure. The term "Force Majeure" shall be defined to include fires, earthquakes, or other casualties or accidents, acts of God, severe weather conditions, strikes or labor disputes, war or other violence, any law, order, proclamation, regulation, ordinance, demand, or requirement of any governmental agency, or any other event beyond the reasonable control of a party.

13.8 Dispute Resolution Process In the event of any disagreement regarding performance under or interpretation of this Agreement and prior to the commencement of any formal proceedings, the parties shall first reasonably attempt in good faith to reach a negotiated solution by designating representatives of appropriate authority to resolve the dispute(s) (through non-binding mediation or otherwise) in a timely and expeditious manner. Nothing in this Agreement shall be construed to restrain the parties from pursuit of equitable relief through any court of competent jurisdiction for any breach of Article 11 of this Agreement.

13.9 Cumulative Rights. All remedies, rights, undertakings, obligations and agreements contained in this Agreement shall be cumulative and in addition to the respective party's other rights and remedies available at law and/or equity.

13.10 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same Agreement.

13.11 Entire Agreement. This Agreement sets forth the entire agreement between the parties and supersedes prior proposals, agreements, and representations between them, whether written or oral relating to the subject matter of this Agreement. This Agreement may be modified only by a writing signed by an authorized representative of each party.

**IN WITNESS WHEREOF**; the parties have caused this Agreement to be executed by their respective duly authorized representatives.

**FIRMA OY                      ICT SERVICE COMPANY OY**

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EXHIBIT A

- Support Plan Terms and Conditions Agreement

- Warranty support services.

Exhibit B

* Service Level Requirements

     1. Supported Products, SC agrees that it will use commercially reasonable efforts to maintain up-to-date contracts with all third-party vendors and shall provide the Finished Products to Firma, the Customers or partners upon request.
     2. Order Notification. SC will provide order confirmation to Firma or customers or partners of any and all orders provided to SC by Firma or one of the Customers or partners for all Finished Products purchased pursuant to the terms of this Agreement.
     3. Order Submission process. Orders will be submitted by the Firma directly to SC. Any Orders received by Firma will be sent to SC via e-mail. SC will provide Order Acceptance to Firma.
     4. Delivery. SC will provide timely delivery of Finished Products to the designated delivery location specified by Firma and/or the applicable customer or partner placing the Finished Products order. SC will provide Firma with an estimated time of delivery. SC will use commercially reasonable efforts to provide delivery in accord with Firma's delivery commitments with each applicable customer.
     5. Product Return and Maintenance Contract Issues. SC will provide prompt administration, coordination and processing of any issues that result in the return or replacement of products either at time of installation or, where applicable, during the life of any maintenance contracts sold by SC in conjunction with each Finished Products.
     6. Order Tracking. SC will provide a web-based order tracking system within 30 days of contract signing and number for all orders for product in conjunction with the sale of Firma's Finished Products.
     7. Leasing options. SC will provide commercially reasonable and competitive leasing rates based upon the Customer or partner's credit rating for the products or products and services when so requested by Firma or one of the Customers or partners.