**Software Development Agreement**

* **ostajan näkökulmasta**

Sopimuspohja tehty selvästi ohjelmistotuotteen ostajan näkökulmasta tilanteeseen, jossa toimittaja kehittää ja toimittaa ostajalle räätälöidyn ohjelmiston ostajan määrittelemään tarkoitukseen kiinteähintaisella maksulla, jota maksetaan erissä työn edistymisen mukaan. Toimitettavan ohjelmiston tekijänoikeus siirtyy tässä pohjassa ostajalle. Ostaja voi halutessaan keskeyttää kehitystyön ja päättää sopimuksen voimassaolon, jos toimittajan välitoimitusten laatu ei ole ostajaa tyydyttävää.

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\_\_*

**Software Development Agreement**

This Agreement is entered into on this day of 20\_\_, (the "**Effective Date**") by and between ("**Owner**") and

("**Developer**").

Owner and Developer are sometimes referred to individually as a "**Party**" or collectively as the "**Parties**."

**WHEREAS** Owner desires to engage Developer to provide consulting services in connection with Owner's software products and Developer desires to provide those services. Accordingly, the Parties have agreed to the following:

**ARTICLE 1. - FUNCTIONALITY SPECIFICATIONS**

Developer will develop and deliver to Owner the software work described in the Functionality Specifications, attached as Exhibit A (the "**Deliverables**").

**ARTICLE 2. - DEVELOPMENT PLAN**

Within \_\_\_ days of receipt of the Functionality Specifications, Developer will prepare and deliver to Owner a Development Plan for the Deliverables (the "**Plan**"). The Plan will include a detailed description of the tasks to be performed by Developer, schedule of performance milestones (including delivery dates for each

Deliverable), a schedule of payments and a statement of the Developer's then current rates. The Plan may include additional terms and conditions as the parties may wish to include.

**ARTICLE 3. - ACCEPTANCE OF DEVELOPMENT PLAN**

Owner will have\_\_\_ days from receipt of the Plan to review the Plan and submit any modifications or corrections to Developer. Acceptance of the Plan will be in the sole discretion of the Owner. If approved, the Plan will be marked as Exhibit B and attached to this Agreement.

**ARTICLE 4. - COMPENSATION**

4.1 The total price for all work done in connection with this Agreement is €\_\_\_\_\_\_\_\_ (the "**Total Price**"). The Total Price will be paid in installments as set forth in the Plan. As each installment becomes due, Developer will submit an invoice to Owner. Invoices will be paid within fourteen days of receipt. In the event of a dispute regarding whether a milestone was reached and whether a payment became due, Owner will not be under an obligation to pay the amount purportedly due until the dispute is resolved.

4.2 Owner will withhold ten percent of the Total Price until ten days after final acceptance of all Deliverables, at which time Developer will submit an invoice to Owner for the final payment.

4.3 If this Agreement is terminated before final acceptance of all Deliverables, Developer will be paid for work that conforms to the specifications set forth in the Plan completed up to the date of termination.

**ARTICLE 5. - DEVELOPMENT OF DELIVERABLES**

On approval of the Plan, Developer will commence development of the Deliverables in accordance with the Functionality Specifications, Plan and this Agreement. Developer will deliver the Deliverables to owner for approval, in Owner's sole discretion, in the manner and on the dates specified in the plan.

**ARTICLE 6. - ACCEPTANCE**

Within ten days of receipt of each Deliverable, owner will provide Developer with one of the following:

(a) written approval of the Deliverable; or

(b) a written list of changes that must be made before owner will approve the Deliverable;

or

(c) notice that this Agreement is terminated, as provided in article 20.2.

No Deliverable will be considered approved by owner and no payment will be made for completion of the Deliverable until Developer has received written confirmation of approval of the Deliverable from owner and all preceding Deliverables have been approved by Owner.

**ARTICLE 7. - DELIVERABLE CONTENT**

All or part of the Deliverables may consist of text, graphics, software code and other content supplied by both Owner ("**Owner Content**”) and Developer ("**Developer Content**").

**ARTICLE 8. - COSTS AND FEES**

Developer will be responsible for all development costs associated with the Deliverables, including, but not limited to, the costs of any fees payable for software, content or other licensing rights or acquiring services or materials in connection with carrying out the Plan.

**ARTICLE 9. - INTELLECTUAL PROPERTY RIGHTS**

9.1 All Deliverables will be owned by Owner and will be considered work made for hire by Developer for Owner. Owner will own all copyrights in the Deliverables. If all or part of any Deliverable is, for any reason, deemed not to be a work made for hire, or Developer agrees to execute all documents necessary to transfer ownership of any and all rights, including copyrights, it may have in the Deliverables to Owner.

9.2 To the extent Developer has any moral rights (droit moral) or similar rights under the law of any jurisdiction in any of the Deliverables, Developer expressly waives those rights. Except as provided in article 10, Developer waives any right to have the Deliverables attributed to it or to prevent the Deliverables from being modified, edited, transformed, or otherwise adapted as owner may deem necessary.

9.3 Except for the content specifically identified in article 9.4, Owner will own the exclusive rights including, but not limited to copyrights and other intellectual property rights, in the Deliverables. In the event this Agreement is terminated before final acceptance, Owner will own the exclusive rights including, but not limited to copyrights and other intellectual property rights, in the portion of the Deliverables actually completed.

9.4 Owner Content excepted, if Developer is unable to grant or assign to Owner the exclusive rights to any portion of the Deliverables, that portion of the Deliverables will be referred to as "**Excluded Material**." Developer will specifically identify all Excluded Material on Exhibit C to this Agreement. Developer's identification will include, at minimum the following information: (l) the nature of the Excluded

Material, (2) the owner of the Excluded Material; (3) Developer's authority to include the Excluded Material in the Deliverables; (4) any restrictions or royalty terms applicable to the use of the Excluded Material in the Deliverables. The only Excluded Material that may be included in the Deliverables is the material specifically identified in Exhibit C. No other Excluded Material can be used in the Deliverables.

9.5 Developer will obtain at its own expense an irrevocable, nonexclusive, worldwide, perpetual, royalty-free license for Owner and its agents and assigns to exploit the Excluded Material identified in Exhibit C for, among other things, the right to reproduce the Excluded Material, to distribute the Excluded Material, to create derivative materials based on the Excluded Material, to publicly display the Excluded Material, to publicly perform the Excluded Material, and to transmit the Excluded Material digitally or by any other means.

**ARTICLE 10. - DEVELOPER CREDIT**

For a period of six months from the date of final acceptance of the Deliverables, Owner will include an "acknowledgments" page in the multimedia work in which the Deliverables are incorporated. The acknowledgments page will credit Developer as the developer of the Deliverables. Owner will have full discretion as to the format of the credit. Developer will be responsible for providing Owner with information for the credit and for updating that information as reasonably needed. Including a credit for Developer in

Owner's software work does not confer on Developer any copyright, trademark or other proprietary interest or right in the work or any portion of it.

**ARTICLE 11. - CHANGE ORDERS**

Owner will submit all change requests concerning the Deliverables to Developer in writing. On receiving each change request, Developer will evaluate the request at its standard rates and charges and provide a written response within two business days. The written response will include a statement of the availability of Developer's personnel and resources, as well as any impact the proposed changes will have on the fee for the Deliverables, delivery dates, milestones, or warranty provisions of this Agreement.

Changes to the Plan will be reflected in a "Development Plan Modification Agreement." The Development Plan Modification Agreement will amend the Plan appropriately to incorporate the desired changes and acknowledge any effect of the changes on the provisions of this Agreement. The Development Plan Modification Agreement will not become effective and binding on the Parties until signed by authorized representatives of Owner and Developer. When signed by the Parties, each Development Plan Modification

Agreement will be attached to this Agreement and become a part of it.

**ARTICLE 12. - RETENTION OF BACKUP COPY**

Developer will maintain a backup copy of the Deliverables for a period of three months from the date of final acceptance by Owner. At the expiration of the three months or on termination of this Agreement before final approval, Developer will destroy all of its copies of the Deliverables, including electronic and printed formats and all backup copies.

**ARTICLE 13. - CONFIDENTIALITY**

13.1 For purposes of this Agreement, "Confidential Information" includes, but is not limited to, business plans. marketing plans, advertising material, customer lists, business records, projections, product information, financial information and any other information designated as confidential by Owner.

13.2 Information is not confidential if it is generally available or known within the Internet and multimedia industry, it is in the public domain it was known to Developer before this Agreement was entered into, it was independently received by Developer from a third party, or it was developed independently by Developer.

13.3 During the Term of this Agreement and for a period of one year thereafter. Developer promises and agrees as follows:

(a) to hold the Confidential Information in strict confidence;

(b) to use the Confidential Information only for purposes of carrying out Developer's obligations under this Agreement;

(c) to only disclose the Confidential Information to those of its officers, employees, and agents as are necessary to carry out the purpose of this Agreement and who have agreed to comply with the provisions of article 13; and

(d) to not disclose the Confidential Information to unnecessary third parties.

**ARTICLE 14. - WARRANTIES**

14.1 With the exception of Owner Content, Developer represents and warrants as follows:

(a) with the exception of the Excluded Material, that Developer is the sole author/creator of all of the Deliverables;

(b) that Developer has authority to grant, assign, and/or license the Deliverables to Owner;

(c) that the Deliverables are not subject to any liens or other security interests; and

(d) that the Deliverables do not infringe the copyrights, trademarks, or any other intellectual property or proprietary rights of any third person.

14.2 Developer represents and warrants that the Deliverables will be developed in a workmanlike manner and with the highest professional diligence and skill.

14.3 Developer represents and warrants that for a period of six months following final acceptance of the Deliverables by Owner, the Deliverables will be free from material reproducible programming errors and defects in workmanship and materials and will substantially conform to the specifications in the Plan

and Functionality Specifications when maintained and operated in accordance with Developer's instructions.

If material reproducible programming errors are discovered during the six month warranty period, Owner will provide written notice of the errors to Developer who will promptly remedy them at no additional expense to Owner. Developer's warranty against programming errors does not extend to errors caused by the following:

(a) hardware failures due to defects, power problems, environmental problems, or any cause other than the Deliverables;

(b) modification of the Deliverables, operating systems, or computer hardware by any party other than Developer; or

(c) misuse, errors or negligence of Owner, its employees or agents in operating or incorporating the Deliverables.

14.4 Developer and Owner represent and warrant that they have the right, power, and authority to enter into this Agreement.

**ARTICLE 15. - LIMITATIONS OF WARRANTIES AND LIABILITY**

THE REPRSENTATIONS AND WARRANTIES SET FORTH IN ARTICLE 14 AND ITS SUBARTICLES

ARE THE ONLY EXPRESS REPRESENTATIONS AND WARRANTIES MADE BY DEVELOPER EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, DEVELOPER DISCLAIMS ANY AND ALL EXPRESS WARRANTIES, WARRANTIES OF TTINESS FOR A PARTICTILAR PURPOSE AND IMPLIEDWARRANTIES OF MERCHANTABILITY.

WITH THE EXCEPTION OF INDEMNIFICATION OBLIGATIONS, NEITHER THE PARTIES WILL OF IN ANY CIRCUMSTANCES BE LIABLE FOR ANY LOSS OF BUSINESS OR PROFITS, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR SIMILAR DAMAGES, OR OTHER THAN AS SET FORTH IN THIS AGREEMENT, FOR CLAIMS OF DAMAGES MADE BY ANY THIRD

PARTY FOR ANY CAUSE WHATSOEVER, REGARDLESS OF THE FORM OF ACTION, INCLUDING NEGLIGENCE, EVEN IF IT HAS BEEN ADYISED OF THE POSSIBILITY OF SUCH DAMAGES.

EACH PARTY ACKNOWLEDGES THAT THIS LIMITATION OF LIABILITY REFLECTS AN INFORMED, VOLUNTARY ALLOCATION BETWEEN THF' PARTIES OF THE RISKS (KNOWN AND UNKNOWN THAT MAY EXIST IN CONNECTION WITH THIS AGREEMENT.

WITH THE EXCEPTION OF INDEMNIFICATION OBLIGATIONS, IN NO EVENT WILL EITHER PARTY'S LIABILITY EXCEED THE TOTAL PRICE.

**ARTICLE 16. - INDEMNIFICATION**

16. 1 Owner will indemnify Developer and hold it harmless from any and all claims, losses, deficiencies, damages, liabilities, costs, and expenses (including but not limited to reasonable attorneys' fees and all related costs and expenses) incurred by Developer as a result of any claim, judgment, or adjudication against Developer arising from: (i) any breach or allegation which, if true, would constitute a breach of any of Owner’s obligations or warranties in this Agreement and (ii) the actions or omission, of Owner, its officers, directors, employees, agents, or assigns, provided that Developer (a) promptly notifies owner in writing of any such claim and gives owner the opportunity to defend and or settle any such claim at Owner's expense and (b) cooperates with Owner, at Owner’s expense, in defending or settling such claim. Owner will have no liability for infringement of copyright, trademark, patent, or other proprietary rights to the extent that the infringement arises from the use of (i) any matter not explicitly authorized by Owner for use in the Deliverables or (ii) Owner Content in a manner not explicitly authorized by Owner or (iii) Developer Content.

16.2 Developer will indemnify owner and hold it harmless from any and all claims, losses, deficiencies, damages, liabilities, costs, and expenses (including but not limited to reasonable attorneys' fees and all related costs and expenses) incurred by Owner as a result of any claim, judgment, or adjudication against owner arising from: (i) any breach or allegation which if true, would constitute a breach of any of Developer’s obligations or warranties in this Agreement; (ii) the actions or omissions of Developer, its officers, directors, employees, independent contractors, agents, assigns, or any other person or entity working under the supervision of or at the direction of Developer, provided that Owner (a) promptly notifies Developer in writing of any such claim and gives Developer the opportunity to defend or settle any such claim at Developer’s expense and (b) cooperates with Developer, at Developer's expense, in defending or settling such claim.

**ARTICLE 17. - INSURANCE**

During the Term of the Agreement, Developer will maintain insurance with a carrier satisfactory to Owner, concerning and covering any and all of Developer's obligations under this Agreement. The insurance will name Owner as an additional insured and will include, without limitation, comprehensive general liability, including contract liability and products liability coverage, and statutory workers' compensation insurance each of limits of at least one million Euros (€1.000.000), and errors and omissions, including intellectual property infringement liability, with limits of at least five million Euros (€5.000.000).

**ARTICLE 18. - MISCELLANEOUS**

18.1 Developer and Owner acknowledge and agree that Developer is an independent contractor, and is not an employee, agent or partner of Owner. Except as provided in this Agreement, Owner has no right to direct the manner in which Developer fulfills its obligations and duties in developing the Deliverables.

18.2 Developer agrees to treat Owner as its most favored customer. Developer represents that all of the provisions of this Agreement are comparable to or better than the equivalent provisions being offered by Developer to any of its other customers. If Developer offers more favorable provisions to any customer during the terms of their contracts than under this Agreement, the provisions will be made available to Owner.

18.3 Survival. The provisions of articles \_\_\_\_\_\_\_\_\_\_\_\_\_ including any subarticles, will survive a termination or expiration of this Agreement.

18.4 Neither Parry will solicit for employment, or hire the other's current or future employees, either directly or indirectly, during the Term of the Agreement and for six months thereafter, without first obtaining the other Party's written consent.

18.5 During the Term of this Agreement, Developer agrees not to perform similar services for one of Owner's competitors. In addition, Developer agrees that for the Term of this Agreement and for a period two months thereafter, it shall not design, develop, create, or produce, directly or indirectly, any product in any media, now known or later developed, with an end-user interface or look-and-feel which is substantially similar to the Deliverables.

18.6. Publicity without prior written consent of owner in each instance, Developer agrees that it will not refer to the existence of this Agreement or the Deliverables in press releases, advertising, or materials distributed to prospective customers.

18.7 The Parties understand that time is of the essence in carrying out their respective obligations under this Agreement.

18.8 The headings in-this Agreement are for purposes of reference only and are intended to have no legal effect.

18.9 All notices will be in writing and will be delivered personally or sent by e-mail at the addresses specified below:

*If to Owner at:*

*If to Developer at:*

Either Party may change the person or the address to which notices are directed by giving written notice to-the other Party.

18.10 If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable the rest of the Agreement will remain in full force and effect and will in no way be affected or invalidated.

18.11 This Agreement, including all Exhibits, Appendices, and Attachments, contains the entire agreement of the Parties relating to their rights granted and obligations concerning the Deliverables. Any oral representations or modifications concerning this instrument will be of no force or effect unless contained in a subsequent written modification signed by the party to be charged.

**ARTICLE 19. - ASSIGNMENT**

19.1 Neither Party may assign any of its respective obligations under this Agreement without the express written consent of the other party.

19.2 Owner may assign or sublicense all or any portion of its rights under this Agreement to any third party without the permission of Developer.

**ARTICLE 20. - TERM AND TERMINATION OF AGREEMENT.**

20.l The term of the Agreement will extend from the Effective Date to the date of final acceptance of all Deliverables (the "Term").

20.2 This Agreement will commence on the Effective Date and will continue in full force and effect unless and until terminated in accordance with the provisions of this Agreement or until acceptance by Owner of all Deliverables. If at any time Owner becomes dissatisfied with Developer's performance of its obligations under this Agreement, Owner may immediately terminate this Agreement by providing written notice to Developer. In the absence of a material breach by Owner, Developer may not terminate this Agreement without the prior written consent of Owner.

20.3 Upon termination of this Agreement for any reason Developer will return all copies of all Deliverables (or any portion of them), in all media, and unless otherwise agreed to by the Parties, will erase or destroy any version of the Deliverables (or any portion of them) contained in any type of computer memory.

**ARTICLE 21. - APPLICABLE LAW**

21.1 This Agreement will be governed, construed and interpreted in accordance with the laws of Finland.

21.2 Any controversy or claim arising out of or relating to this Agreement, shall be finally settled by the city court of Helsinki (Käräjäoikeus).

**IN WITNESS** whereof this Agreement has been executed by the Parties by their duly authorized representatives on the date first above written.

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Mx xxxxx Mx xxxxxx**

**Managing Director Managing Director**

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Exhibit A

Exhibit B

Exhibit C