Escrow agreement for software (SaaS)

201806 OnLine Collective

The undersigned,

/.../, which has its seat in /.../, legally represented in this matter by /.../, hereinafter referred to as: the Supplier, and

Softcrow Trusted Electronic Services B.V., which has its seat at Hettenheuvelweg 8, 1101 BN Amsterdam, legally represented in this matter /…/, hereinafter referred to as: SoftcrowServices,

whereas:

- as an integral part of the SaaS Service, the Supplier has concluded an SLA giving a non-exclusive licence for the use of the Software to the Beneficiary;

- the Supplier has reserved the Intellectual Property Rights;

- as part of the SaaS Service, the Supplier will perform the Maintenance of the Software in order to guarantee the continuity of use of the SaaS Service;

- the Supplier recognises that the Beneficiary should, in certain circumstances, be able to have access to the Business Data as well as to the SaaS Infrastructure, the Software and the Source-code version, but only in order to be able to guarantee continuity of use of and/or support for the SaaS Service;

- the Supplier does not wish to transfer the DepositBeneficiary and the Deposit to the Beneficiary outright;

- the Parties have for this reason agreed, pursuant to the SLA, to place the Deposit and the DepositBeneficiary in SecureStorage and SecureStorageBeneficiary respectively with SoftcrowServices;

- the registration of a Beneficiary with SoftcrowServices is regulated in the manner described in the Agreement;

- as a result of registration by SoftcrowServices in the manner described in the Agreement the Beneficiary becomes party to the Agreement;

- in these specific circumstances, the Parties now wish to record their future legal relations in such a way as to be binding henceforth;

declare that they have agreed as follows:

Art. 1. Definitions

In the Agreement with Appendices, the following terms written with an initial capital letter have the following meanings:

1. 'Agreement': this escrow agreement.

2. 'Auditor': an independent accountant/expert attached to the Dutch Order of Registered EDP Auditors (NOREA). The Code of Conduct and Professional Rules for Registered EDP Auditors (Gedrags- en Beroepsregels Register EDP Auditors) shall apply.

3. 'Beneficiary': the user(s) who has concluded a SLA with the Supplier and has/have been registered in writing by the Supplier with SoftcrowServices and who, by signing the confirmation of registration issued by SoftcrowServices (based on a standard model included in **Appendix 4** to the Agreement), have acknowledged to the Parties and SoftcrowServices that they agree with and are bound by the provisions of the Agreement. By virtue of this acknowledgement the Beneficiary shall also be regarded as 'party' to the Agreement and the provisions of the Agreement applicable to the Parties will also apply to the Beneficiary.

4. 'Business Data': the data entered by the Beneficiary in the SaaS Service and data generated by the SaaS Service.

5. 'Data Centre I': a data centre established in the European Union and having an ISO 27001 or comparable certification.

6. 'Data Centre II': a second data centre established in the European Union and having an ISO 27001 or comparable certification. Data Centre II synchronises its files with those in Data Centre I twice daily.

7. 'Deposit': the Deposit of the Source-code version, the Software, the description of the SaaS Infrastructure as set out in **Appendix 1**, the Mirror (optional), the accompanying Deposit Specification Form and the List of Persons placed or yet to be placed by the Supplier in SecureStorage.

8. 'Deposit Back-up': a (reserve) copy of the Deposit and the DepositBeneficiary most recently placed in SecureStorage.

9. 'DepositBeneficiary': the copy of the most recent Business Data delivered/yet to be delivered by the Supplier for the benefit of the SecureStorageBeneficiary.

10. 'Deposit Specification Form': the specification form supplied by SoftcrowServices (https://escrow.softcrow.com/uk/downloads/) and to be completed by the Supplier, which gives an itemised statement of the Source-code version and Software to be supplied by the Supplier.

11. 'Intellectual Property Rights': the intellectual property rights comprise the following rights: (i) all copyright in the Software and the Source-code Version thereof; (ii) all database rights if and in so far as the Software and/or the Source-code Version or part thereof is/are designated as a database, and (iii) all patent rights in respect of the Software and the Source-code Version thereof, if and in so far as the Software and/or the Source-code Version thereof contain/contains inventions.

12. 'List of Persons': a list to be drawn up by the Supplier specifying the names of the persons involved in the Maintenance, together with their addresses and other contact data;

13. 'Maintenance': all changes, expansions and/or upgrades of the Software and/or the SaaS Service which are useful and/or necessary for the continuous and undisrupted use of the SaaS Service.

14. 'Mirror': an image, clone or snapshot of the actual environment within which the SaaS Service is hosted. At the written request of the Beneficiary, the Supplier shall make the Mirror for the benefit of the Deposit. The costs for making the Mirror shall be borne by the Beneficiary.

15. 'Parties': the Beneficiary and the Supplier together.

16. 'Random Check': a check to be made by SoftcrowServices at the written request of the Beneficiary, by reference to the Deposit Specification Form within the Supplier's environment, when the Supplier will provide access for SoftcrowServices, on the basis of a sample whose scope is determined by SoftcrowServices, to files to be selected by SoftcrowServices, the presence and readability of which will be checked in the presence of the Supplier.

17. 'SaaS Infrastructure': the configuration established/yet to be established and made available/yet to be made available in accordance with the instructions of the Supplier for the benefit of the SaaS Service, as described/yet to be described in **Appendix 1** to this Agreement;

18. 'SaaS Service': the SaaS service to be provided through a public and/or private computer network;

19. 'Safekeeping': the taking into and holding in safekeeping under article 7:600 of the Dutch Civil Code of the Deposit by SoftcrowServices in accordance with article 16 following the release of the Deposit in accordance with the provisions of articles 12-14 of the Agreement.

20. 'SecureStorage': the storage to be created by SoftcrowServices within the StorageEnvironment pursuant to article 3 made available online by SoftcrowServices to the Supplier and the Beneficiary for the placement and hold on deposit of the Deposit and/or the Deposit Back-up.

21. 'SecureStorageBeneficiary': the storage to be created by SoftcrowServices within the StorageEnvironment pursuant to article 3 made available online by SoftcrowServices to the Supplier and the Beneficiary for the placement and hold on deposit of the DepositBeneficiary.

22. 'SecureStorage Registration Form': the form made available by SoftcrowServices and to be completed by the Supplier for the creation of a SecureStorage and a SecureStorageBeneficiary and the login credentials required for this purpose.

23. 'SLA': the agreement which has been or is entered into by the Beneficiary with the Supplier in respect of the provision and use of the SaaS Service.

24. 'Software': the machine version (runtime executable) of all software in which the Intellectual Property Rights are vested in the Supplier and which is used by the Beneficiary under the SLA as part of the SaaS Service or which is used in some other way by the Supplier for and/or for the benefit of the SaaS Service, as described in the Deposit Specification Form.

25. 'Source-code licence': the irrevocable, non-exclusive right, not limited in time and exclusively for the benefit of the Beneficiary, to reproduce the Deposit and/or the DepositBeneficiary, to use it for the purposes of Maintenance or to generate a new machine version of the Software, to use the Software and to perform all acts which may be useful or necessary for the exercise of this right.

26. 'Source-code version': the Software in source-code described/yet to be described in the Deposit Specification Form, together with all materials needed for the installation, for understanding the arrangement and structure of the Software and/or of the database, and for the Maintenance of the Software, including:

- a description of the requisite hardware platform (make, type, configuration);

- the requisite development platform (or description of it) (i.e. programming language, 4GL, case tools, compilers/libraries, linkers and so forth);

- the compilation script;

- all available functional and/or technical (development and installation) documentation;

- any interfaces, conversion and migration programs, and

- the third party software in machine language (runtime executable) necessary to perform the Maintenance and/or use the Software.

27. 'StorageEnvironment': the secure environment created/yet to be created by SoftcrowServices in Data Centre I and Data Centre II.

28. 'Third Party Software': all software in which the intellectual property rights are vested in parties other than the Supplier and which is required for the use of the SaaS Service agreed under the SLA, as described in **Appendix 1** to the Agreement.

29. 'Verification Examination': the verification examination of the Source-code version to be instituted at the written request of the Beneficiary and to be carried out by an Auditor within the powers laid down in Article 7. The standard Verification Examination is described in **Appendix 2.**

Art. 2. List of Persons

1.   The Supplier shall submit a List of Persons to SoftcrowServices for Deposit, for the first time at the start of the Agreement and thereafter whenever there are changes of personnel involved in the Maintenance.

2.   The Supplier hereby gives the party receiving the Deposit under the Agreement, unconditional and irrevocable consent, to contact the persons included in the List of Persons for the purpose of having Maintenance-related work carried out by one or more of them on conditions to be agreed between them and such party.

3.   In relation to the works to be performed for such party as described at 2 above, the Supplier hereby releases the persons included in the List of Persons from any limitation(s) and/or obligation(s), in any form and in any capacity whatever, which result from agreement(s) concluded between such persons and the Supplier.

Art. 3. SecureStorage and SecureStorageBeneficiary

1.   After the Agreement has been signed, SoftcrowServices shall make the SecureStorage Registration Form available to the Supplier.

2.   Using the SecureStorage Registration Form completed by the Supplier (in consultation with the registered Beneficiary), SoftcrowServices shall create a SecureStorage as quickly as possible, but in any event within a period of ten working days after signature of the Agreement.

3.   The SecureStorage is accessible through a secure VPN connection. Transfer from and to the SecureStorage takes place through SFTP. The VPN and SFTP credentials required for access to the SecureStorage shall be supplied by SoftcrowServices to the Supplier before the first Deposit is made, with the User ID and the password being sent through separate channels.

4.   The Supplier shall upload the encrypted Deposit to the SecureStorage using an encryption key communicated by the Supplier in writing to the Beneficiary in advance. The uploading will take place at the start of the SecureStorage and thereafter whenever changes are made to the SaaS Service Infrastructure.

5.   The Supplier shall upload the encrypted DepositBeneficiary to the SecureStorageBeneficiary using an encryption key communicated by the Supplier in writing to the Beneficiary in advance. The uploading will take place at the start of the SecureStorageBeneficiary and thereafter with the frequency agreed in the Deposit Specification Form.

6. If the Supplier receives notice from SoftcrowServices that the planned Deposit and/or DepositBeneficiary has not taken place or has not been properly performed, the Supplier shall immediately upload a new Deposit and/or new DepositBeneficiary in proper consultation with the Beneficiary and SoftcrowServices in accordance with the provisions of article 4.

7.   If the reason why the Deposit and/or the DepositBeneficiary has not been properly carried out is a lack of storage space or the lack of sufficient data transmission capacity for the SecureStorage or, as the case may be, the SecureStorageBeneficiary, SoftcrowServices shall increase the capacity of the SecureStorage or, as the case may be, the SecureStorageBeneficiary. The costs incurred in this connection shall be borne by the Supplier.

8.   The Deposit(s) shall be kept in SecureStorage by SoftcrowServices in accordance with the retention specified by the Parties in the SecureStorage Registration Form. Deposits that fall outside the scope of the stated retention shall be destroyed by SoftcrowServices in accordance with the provisions of article 7.

Art. 4. Encryption

1.   The Supplier shall encrypt the Deposit to be placed in SecureStorage and the DepositBeneficiary to be placed in SecureStorageBeneficiary in order to make it inaccessible. The Supplier and the Beneficiary will jointly decide how the encryption is to be carried out. This includes in any event determining the length of the encryption key(s) to be used and determining the term of the validity of the encryption key(s) used and how the encryption key(s) and the other relevant information are to be exchanged with the Beneficiary.

2.   The encryption will be carried out in accordance with the following procedure:

a.   Using the Deposit Specification Form, the Supplier shall assemble the Deposit and the DepositBeneficiary and put it in a separate file in its computer system.

b.   The Supplier shall separately encrypt the Deposit as well as the DepositBeneficiary and shall upload the encrypted Deposit as a single file to the SecureStorage and the encrypted DepositBeneficiary as a single file to the SecureStorageBeneficiary at SoftcrowServices.

c.   The Supplier shall separately encrypt the accompanying Deposit Specification Form (using the same encryption tool and the same encryption key) and shall make available the encrypted Deposit Specification Form to the Beneficiary.

d.   The Supplier shall inform the Beneficiary which encryption tool it has used for the encryption.

3.   The Supplier shall NOT hand over the encryption key to SoftcrowServices. The Beneficiary is fully responsible for the safekeeping of the encryption key as obtained from the Supplier.

4.   The Beneficiary shall determine whether the Deposit Specification Form can be decrypted using the encryption tool and the key obtained from the Supplier.

5.   If it is established that the Deposit Specification Form cannot be decrypted using the encryption tool and the accompanying key, the Beneficiary shall give notice of this by e-mail to the Supplier and SoftcrowServices without delay and the above-mentioned procedure will be repeated.

Art. 5. Third Party Software

1.   If Third Party Software is placed in SecureStorage or SecureStorageBeneficiary by the Supplier, this will consist solely in the placing and storage of a reserve copy of that software and the release thereof under article 12. In such a case the Beneficiary and SoftcrowServices acknowledge that it is clear to them that no further rights are granted by the Supplier.

2. The Parties jointly and severally guarantee to SoftcrowServices that no rights of third parties are inconsistent with the placing and/or storage of Third Party Software in SecureStorage and/or SecureStorageBeneficiary and the release thereof under article 12. The Parties jointly and severally indemnify SoftcrowServices against any claim of third parties on any account whatever in respect of infringement of the rights of third parties to Third Party Software.

3. If an extra licence fee is owed for the placing and storage of Third Party Software in SecureStorage and/or SecureStorageBeneficiary and is charged by the relevant supplier/licensor to SoftcrowServices, such fee and all other costs and charges in respect of this Third Party Software shall be borne by the Parties. The Parties indemnify SoftcrowServices against liability for the relevant licence fee and other costs and charges.

Art. 6. Random Check

1. At the written request of the Beneficiary, SoftcrowServices shall carry out a Random Check, before the Deposit is encrypted by the Supplier for SecureStorage in accordance with article 4. The Parties hereby undertake to cooperate in this check at such time.

2. In the event of a Random Check, SoftcrowServices shall determine, in the presence of the Supplier, that the files specified by the Supplier in the Deposit Specification Form are present and accessible. The Supplier shall make printscreens of the selected and located files for the benefit of the Beneficiary.

3. If the files selected by SoftcrowServices are present and/or can be accessed, the Supplier shall encrypt the Deposit pursuant to article 4 and place it in SecureStorage.

4. If the files selected by SoftcrowServices are not present and/or cannot be accessed, the Supplier shall arrange at its expense for replacement of the files supplied by the Supplier for Deposit and a fresh Random Check shall then be carried out at the Supplier's expense.

Art. 7. Verification Examination of the Source-code version

1. If the Beneficiary has made a written request for a Verification Examination, SoftcrowServices shall instruct the Auditor to carry out a Verification Examination. The Parties hereby undertake to cooperate in this when the occasion arises. The costs of the Verification Examination shall be borne by the Beneficiary.

2. For the purposes of the Verification Examination SoftcrowServices shall supply the Auditor with a copy of the Deposit most recently placed in the SecureStorage and a copy of the DepositBeneficiary most recently placed in the SecureStorageBeneficiary for downloading. The Beneficiary shall make available to the Auditor the encryption key it has received from the Supplier.

3. The Supplier hereby grants to the Auditor the irrevocable right:

- to decrypt the Deposit and the DepositBeneficiary using the encryption key obtained from the Beneficiary;

- to load the digital element of the Source-code version on to a computer system in order to carry out the Verification Examination referred to in the Agreement.

4. The Auditor shall be competent to examine:

- whether a machine version (runtime executable) of the Software as used by the Beneficiary as part of the SaaS Service can always be generated from the Source-code version (whether or not together with modifications);

- whether the Source-code version is suitable to be continuously and efficiently used by a party other than the Supplier to carry out the Maintenance, always assuming that such other party has sufficient expertise and the correct development environment.

- whether the Deposit enables a party other than the Supplier to provide the SaaS Service.

5. If the Verification Examination shows that the Source-code version is suitable for generating the correct machine version of the Software and/or that the Source-code version is complete and suitable for the purpose of carrying out Maintenance and/or that a party other than the Supplier can provide the SaaS Service, the result of the examination will be deemed to be positive.

6. If the Deposit and/or the DepositBeneficiary was modified or expanded during the Verification Examination before the positive result referred to at 5 above was obtained, the Supplier shall, pursuant to article 4, encrypt the modified Deposit and/or the DepositBeneficiary and upload it to SecureStorage or, as the case may be, the SecureStorageBeneficiary. The Auditor and the Supplier shall notify SoftcrowServices of this additional Deposit or, as the case may be, DepositBeneficiary before it is uploaded to SecureStorage or, as the case may be, the SecureStorageBeneficiary.

7. After the Verification Examination has been successfully completed, the Supplier shall remove the verified Deposit and the DepositBeneficiary from the computer system on which the examination was carried out.

8. If a Deposit has been the subject of a Verification Examination, SoftcrowServices shall keep the verified Deposit in SecureStorage until a fresh Verification Examination has been successfully completed and the verified Deposit is in SecureStorage. Except where different instructions have been given by the Beneficiary to SoftcrowServices (which instructions have been confirmed by SoftcrowServices to the Beneficiary and the Supplier) the last verified Deposit will replace the previously verified Deposit.

9. The Auditor shall, at the request of the Beneficiary, make an extra copy of the Software generated in the Verification Examination exclusively for the purpose of having the Beneficiary establish, either in cooperation with the Auditor or otherwise, that this copy corresponds with the software as in use by the Beneficiary as part of the SaaS Service. If it transpires that this copy does not correspond with the software being used by the Beneficiary, a new Verification Examination shall be carried out in accordance with the provisions of paragraph 10 of this article.

10. If the result of the examination was not successful, the costs of the examination shall be borne by the Supplier. In that case the Supplier shall also bear the costs of replacing and/or supplementing the unusable parts or components of the Deposit and/or the DepositBeneficiary. A fresh Verification Examination will subsequently be carried out.

Art. 8. Changes to the Deposit

1. If modifications have been made to the SaaS Service and have been accepted by the Beneficiary, the Supplier shall upload the modified Deposit to SecureStorage within 30 days, in accordance with the provisions of article 3.

2. A Random Check or Verification Examination will be carried out on written request.

3. The Parties shall have the same rights and duties under the Agreement in respect of any subsequent Deposit as in respect of the original Deposit.

Art. 9. Deposit Management (optional)

1.   The Beneficiary is aware that in the event of modifications to the SaaS Service, the Mirror and the Software (i.e. the Source-code Version) will change. If these modifications are being used by the Beneficiary, the Deposit must be updated.

2.   In consultation with the Beneficiary, the Supplier has indicated in the SecureStorage Registration Form the frequency with which the Deposit will be renewed.

3.   As regards any modifications to the Software, the Beneficiary requests SoftcrowServices to perform the Deposit Management. This means that:

-   in the event of any change to the Deposit the Beneficiary will receive an email message about this at such email address as it may specify;

-   SoftcrowServices will check that the frequency of delivering a Deposit corresponds with has been stated by the Supplier in the SecureStorage Registration Form.

-   SoftcrowServices will request the Supplier to make a new Deposit as quickly as possible if SoftcrowServices determines that the frequency with which the Deposit is made does not correspond with what has been stated about this by the Supplier in the SecureStorage Registration Form.

4.   The Supplier undertakes to reply by email to a request for information from SoftcrowServices within 5 working days of receipt of such request, and to send a cc to the Beneficiary. In the absence of a reply from the Supplier within the prescribed period, SoftcrowServices shall notify the Beneficiary of this by email.

5.   If the Beneficiary decides not to have Deposit Management carried out by SoftcrowServices, the Beneficiary shall itself check that the Deposit is kept up to date.

Art. 10. Deposit Back-up

1.   The Supplier shall keep a Deposit Back-up available under its own control.

2.   If the release of the Deposit Back-up is necessary for the performance of the Agreement, the Supplier shall immediately upload the Deposit Back-up to SecureStorage or, as the case may be, SecureStorageBeneficiary at the request of SoftcrowServices.

Art. 11. Release of Deposit, DepositBeneficiary and right of use

1.   The Supplier hereby irrevocably grants the Beneficiary, besides the existing right as part of the SaaS Service to use the Software, the Source-code licence without charge, which right is accepted by the Beneficiary.

2.   The Source-code licence granted by the Supplier at 1 to the Beneficiary is rescinded if and in so far as the Beneficiary obtains access to the Deposit, i.e the Source-code version and/or the DepositBeneficiary other than on the conditions included in the Agreement and in the manner described in the Agreement and the Beneficiary has acted unlawfully towards the Supplier in obtaining the Deposit, i.e the Source-code version and/or the DepositBeneficiary.

3.   As additional security for the uninterrupted implementation of the Agreement, the Supplier hereby transfers to SoftcrowServices, free of charge, ownership of the Deposit (i.e. the pursuant to article 4 encrypted Source-code version, Software, accompanying Deposit Specification Form and List of Persons) placed in SecureStorage pursuant to article 3.

4. The Supplier grants SoftcrowServices, free of charge, the unconditional, irrevocable and non-exclusive right, not limited in time, to duplicate the Deposit in the course of performing the Agreement and, in the event of the occurrence of one of more of the circumstances described in article 12 of the Agreement, to make it available, subject to the provisions of articles 14-16, to the Beneficiary for downloading, which right is accepted by SoftcrowServices.

5. After the Beneficiary has received the Deposit under the Agreement through the intermediary of SoftcrowServices and on condition that the Source-code licence has not been rescinded pursuant to paragraph 2 above, the Beneficiary may also outsource the Maintenance to a third party in the case referred to at 3 of this article, provided that such third party assents in writing to the provisions of the Agreement.

6. Pursuant to article 900 of Book 7 of the Dutch Civil Code, the Parties hereby record that, after the release of the Deposit, i.e. the Source-code version and the DepositBeneficiary, pursuant to the Agreement, they will have nothing further to claim from each other under the Agreement. The Parties may not in any way subsequently dispute the release of the Deposit, namely the Source-code version and the DepositBeneficiary, and the (legal) relationship applicable at that time, nor may they subsequently dispute in any way whatever and by whatever form of legal redress the Source-code licence granted by the Supplier.

Art. 12. Conditions for release of the Deposit/ DepositBeneficiary to the Beneficiary

SoftcrowServices shall make available a copy of the Deposit and the DepositBeneficiary for downloading to the Beneficiary if one of the following circumstances occurs:

a. the Supplier is declared bankrupt (faillissement);

b. the Supplier discontinues its business activities;

c. the Supplier will, whether at the end of the period for which the SaaS Service was agreed or otherwise, discontinue the SaaS Service;

d. the Supplier, SaaS Service and/or the Software is/are acquired by a third party, and such party does not perform in full the agreement(s) between the Supplier and the Beneficiary and/or the related agreements between the Supplier and third party suppliers that are necessary for the continued and uninterrupted use of the SaaS Service;

e. the Supplier fails to perform one or more important obligations resulting from the Agreement and remains in breach of this important obligation thirty days after being given written notice of default by registered letter, with a copy to SoftcrowServices.

Art. 13. Termination of registration of the Beneficiary

The registration of the Beneficiary will be terminated if one of the following events occurs:

a. the Beneficiary rescinds the SLA;

b. the costs owed annually pursuant to article 21 are no longer paid by or on behalf of the Beneficiary, or the Beneficiary fails to perform one or more important obligations resulting from the SLA and/or the Agreement, and the Beneficiary, after being given written notice of default, fails to pay the costs and/or perform the important obligations within thirty days of the notice of default;

c. the Beneficiary terminates its registration, which it may do by giving three months' notice by registered letter to the Supplier and SoftcrowServices before the expiry of the period for which it has been charged and has paid to SoftcrowServices the individual registration fee.

Termination of the registration is without prejudice to the payment obligation of the Beneficiary or the Supplier and confers no entitlement to a refund of amounts charged.

Art. 14. Deposit/DepositBeneficiary release procedure

1. If the Supplier is declared bankrupt (faillissement) SoftcrowServices shall, subject to the terms of article 16, immediately release the Deposit and the DepositBeneficiary to the Beneficiary.

2. If, without prejudice to the provisions of article 13, paragraph 1, the Beneficiary or the Supplier considers that one of the circumstances referred to in article 12 has occurred and the party concerned believes that the release of (a copy of) the Deposit and the DepositBeneficiary is necessary as a result of this occurrence, this party shall immediately request SoftcrowServices by registered letter for release.

3. After receipt of the written request for release, SoftcrowServices shall immediately notify the other party of this by registered letter. If the other party does not inform SoftcrowServices and the requesting party of his objections and the reasons therefor by registered letter within seven working days of the date of dispatch of the registered letter of notification by SoftcrowServices, SoftcrowServices shall release the Deposit to the requesting party, subject to compliance with the provisions of article 16.

Art. 15. Dispute resolution art. 12 and art. 13

1. If the Parties disagree about the validity of a request for terminating a registration as referred to in article 14 or for release of the Deposit in the manner described in article 13, at paragraphs 2 and 3, they shall, other than in the circumstances referred to in article 12, at a), arrange to have their dispute settled by means of arbitration in accordance with the Arbitration Rules of the Foundation for the Resolution of Automation Disputes (Stichting Geschillenoplossing Automatisering), which has its seat in The Hague, without prejudice to the right of the Supplier and/or the Beneficiary to institute arbitration proceedings for preliminary relief and without prejudice to the right of the Supplier and/or the Beneficiary to take prejudgment attachment measures (see www.sgoa.org).

2. Before instituting arbitration proceedings as referred to in paragraph 1, the first party to take action shall initiate an ICT Mediation procedure in accordance with the ICT Mediation Rules of the Foundation for the Resolution of Automation Disputes in The Hague. The purpose of an ICT Mediation procedure in accordance with these rules is to provide mediation by one or more mediators. The counterparty undertakes to participate actively in any ICT Mediation procedure which is instituted. This in any event includes the legally enforceable obligation to attend at least one joint meeting of the mediators and the Parties in order to give this extrajudicial form of dispute resolution a chance. The Supplier or the Beneficiary is entitled to terminate the ICT Mediation procedure at any time after a joint first meeting of the mediators and the Parties.

3. The provisions of this paragraph of this article do not prevent the Supplier or the Beneficiary from instituting arbitration proceedings for preliminary relief or taking prejudgment attachment measures (see www.sgoa.org).

4. The rules referred to in paragraphs 1 and 2 are available for inspection at SoftcrowServices and have been published at www.sgoa.org. If the Supplier or the Beneficiary makes use of the procedure referred to in the previous paragraphs, it shall notify SoftcrowServices of this by registered letter, with a copy to the other party. During such procedures SoftcrowServices shall not release the Deposit.

5. The ruling of the Foundation for the Resolution of Automation Disputes will be binding for the purposes of the Agreement.

Art. 16. Safekeeping of Deposit/DepositBeneficiary after release

1. If and in so far as the Beneficiary obtains an irrefutable right under the Agreement to the release of the Deposit and the DepositBeneficiary, for example in the event of the bankruptcy of the Supplier, SoftcrowServices shall immediately arrange for the release of the Deposit and the DepositBeneficiary. The Beneficiary requests SoftcrowServices to retain possession of the Deposit and the DepositBeneficiary by way of Safekeeping, after release, which request is hereby accepted by SoftcrowServices, and the Beneficiary declares that it will demand the actual handing over of the Deposit and the DepositBeneficiary from SoftcrowServices only in the circumstances referred to in paragraph 2 of this article.

2. The party which initiates the release as reffered to in paragraph 1 hereby declares that it will request SoftcrowServices to hand over the Deposit and the DepositBeneficiary from the Safekeeping only if this is necessary in order to guarantee the Maintenance. SoftcrowServices shall make available a copy of the Deposit and the DepositBeneficiary to the Beneficiary for downloading in response to a mere written communication from the Beneficiary to SoftcrowServices that the Deposit and the DepositBeneficiary needs to be handed over in order to guarantee the Maintenance.

3. The costs of the safekeeping shall be borne by the party for whom SoftcrowServices has the Deposit and/or the DepositBeneficiary in Safekeeping.

4. The Safekeeping of the Deposit and/or the DepositBeneficiary may be terminated by the party on whose behalf SoftcrowServices has the Deposit and/or the DepositBeneficiary in its possession, by means of three months' notice before the expiry of the period for which the Deposit Fee was charged and paid to SoftcrowServices, such notice being given by registered letter to SoftcrowServices in which that party requests SoftcrowServices to terminate the Safekeeping of the Deposit.

5. If there is no longer any party on whose behalf SoftcrowServices maintains the Safekeeping of the Deposit and/or the DepositBeneficiary, SoftcrowServices shall destroy the Deposit and the DepositBeneficiary.

Art. 17. Warranties

1. SoftcrowServices shall keep the Deposit in a secure place during the SecureStorage and shall arrange for its release only in accordance with the conditions of the Agreement. If, in the light of the state of information technology, SoftcrowServices feels it necessary to take different and/or supplementary information security measures to ensure the security of either the SecureStorage or the StorageEnvironment, SoftcrowServices shall modify the SecureStorage and/or Storage Environment accordingly. Nonetheless, SoftcrowServices never warrants that its security/information security will be effective in all cases and in all circumstances.

2. The Supplier warrants that it is entitled to all intellectual property rights or that it is competent to conclude this Agreement on behalf of the party legally entitled.

3. SoftcrowServices declares that, when entering into the Agreement, it was not aware of any facts or circumstances which indicate or could have indicated that the Supplier did not have the copyright in the Software and its source code or that the Supplier, by using and/or operating the Software and entering into and implementing the Agreement, is infringing any intellectual property right of a third party. However, SoftcrowServices does not warrant to any of the parties that the Supplier, by using and/or operating the Software and entering into and implementing the Agreement, is not infringing any intellectual property right of a third party.

4. The Supplier warrants that the Source Code version and the Software as deposited with SoftcrowServices (expressly including any modification) are suitable for Maintenance by a third party, provided that it has sufficient expertise and the correct development environment at its disposal.

Art. 18. Privacy, data processing and security

1. If SoftcrowServices considers this to be important for the performance of this Agreement, the Parties shall, on request, supply SoftcrowServices without delay with information in writing about the manner in which they discharge their statutory obligations in respect of the protection of personal data.

2. The Parties jointly and severally indemnify SoftcrowServices against claims of persons whose personal data have been registered or are being processed in a register of personal data held by the Parties or for which the Parties are otherwise responsible by law, unless the Parties prove that the facts on which the claim is based are exclusively imputable to SoftcrowServices.

3. As regards the processing of personal data the Parties deem SoftcrowServices to be a 'processor' within the meaning of the Personal Data Protection Act. SoftcrowServices shall cooperate as far as is technically possible in discharging the obligations of the Parties. The costs of such cooperation are not included in the prices and fees agreed between the Parties and shall be borne in full by the Parties. The obligations of the Parties to pay these prices and fees to SoftcrowServices are joint and several.

4. The responsibility for data processed using a service provided by SoftcrowServices shall be borne exclusively by the Parties and never by SoftcrowServices. The Parties jointly and severally warrant to SoftcrowServices that the content, use and processing of the data are not unlawful and do not infringe any right of a third party. The Parties indemnify SoftcrowServices against any right of action of third parties on any account whatever in connection with these data or the performance of the Agreement.

5. The Parties are, in particular, entitled and obliged to provide SoftcrowServices with all names and contact data of the contacts and all other persons who work with or for one of the Parties and who are, in the opinion of SoftcrowServices, necessary for the proper implementation of this Agreement. The provisions of paragraph 4 of this Article apply by analogy. The Parties hereby authorise SoftcrowServices to approach and deploy the persons concerned at any time and in any way and in any form in the further implementation of this Agreement – whether or not in the name and for the account of SoftcrowServices and/or one of the Parties – in order to ensure that the objectives of this Agreement are achieved. In this connection, the Parties will not invoke, either against SoftcrowServices or against one another, any legal or other impediment to the said deployment of these persons such as – but not limited to – a non-compete clause, a non-solicitation clause or a confidentiality clause in an employment or other contract with such persons.

6. If SoftcrowServices has an obligation under this Agreement or on any other ground to provide for any form of information security, such security will conform to the specifications agreed in writing between the Parties and SoftcrowServices. SoftcrowServices never warrants that the information security will be effective in all circumstances. If the agreement does not contain an express provision about security, the security will be of a level that is not unreasonable in view of the state of the technology, the sensitivity of the data and the costs incurred in providing the security.

7. If computer, data or telecommunication facilities are used in the performance of this Agreement, SoftcrowServices will be entitled to assign access or identification codes to one or more parties. SoftcrowServices is also entitled to change any access or identification codes that have been assigned. The Parties shall treat the access and identification codes confidentially and with due care and disclose them only to authorised members of staff.

SoftcrowServices shall never be liable for loss or damage or costs that are a consequence of the use or abuse of access or identification codes, unless such abuse has been made possible as a direct consequence of intent or deliberate recklessness on the part of the management of SoftcrowServices.

Art. 19. Secrecy

1. Each of the Parties undertakes to observe secrecy with regard to all information about and knowledge of the business affairs of the other party that come to its attention when this Agreement comes into being and/or during its performance.

2. The Beneficiary warrants that after the Deposit has been released by SoftcrowServices the Source-code version will be accessible only to the Beneficiary and will not be given to any other party for inspection, except in so far as necessary for the Maintenance.

Art. 20. Liability and indemnification

1. The total liability of SoftcrowServices for a breach of contract imputable to it shall be limited to reimbursement of direct damage, subject to a maximum of €250,000 (two hundred and fifty thousand euros). The liability of SoftcrowServices for indirect damage, consequential loss and damage, loss of profit and damage due to interruption of business operations is excluded.

2. The party requesting SoftcrowServices for the release of the Deposit and/or the DepositBeneficiary shall indemnify SoftcrowServices against claims which the other party and/or third parties may make against SoftcrowServices, unless the claim is the result of a failure imputable to SoftcrowServices.

3. The Supplier shall indemnify each of the other parties against every claim by third parties with regard to any right or any power in respect of the Deposit and/or the DepositBeneficiary granted by it under the Agreement.

Art. 21. Fees

1. The Supplier shall owe a once-only fee of €950, exclusive of VAT, for the preparation of the Agreement, configuration of the SecureStorage and SecureStorageBeneficiary and support with and testing of the VPN/SFTP connection to be established by the Supplier on the basis of written instructions of SoftcrowServices (maximum duration of work: 2 hours). If the period of 2 hours support by SoftcrowServices included in this amount is exceeded, SoftcrowServices shall inform the Beneficiary/Supplier of this as quickly as possible and charge for the extra work on the basis of an hourly rate of €95, exclusive of VAT. The Supplier shall owe SoftcrowServices an hourly fee of €95, exclusive of VAT, for the provision of support by SoftcrowServices in solving problems with/in the VPN/SFTP connection after the uploading of the first Deposit.

2. If an individual deposit, for which an individual SecureStorage is arranged, is kept for a specific Beneficiary under the collective agreement, the Beneficiary/the Supplier shall owe SoftcrowServices a one time fee of €450, exclusive of VAT, for setting up the additional SecureStorage. The Beneficiary shall owe an annual fee of €710, exclusive of VAT, for keeping an individual deposit in SecureStorage in DataCentre I and DataCentre II.

3. The Beneficiary owes SoftcrowServices an annual fee for keeping the Deposit and the DepositBeneficiary in the SecureStorage and SecureStorageBeneficiary in DataCentre I and DataCentre II respectively. The fee is €1,250, exclusive of VAT, for the SecureStorage and €710, exclusive of VAT, for the SecureStorageBeneficiary.

4. The first contract year shall start on the first day of the month in which the Agreement was entered into. Invoicing shall then always occur on the first day of the month preceding a new contract year.

5. The amounts referred to in paragraph 2 and 3 are based on the principle that the size of the SecureStorage and the SecureStorageBeneficiary does not exceed 50 gigabytes, including 200 gigabytes of data transmissions each month. If, however, the SecureStorage and the SecureStorageBeneficiary and/or the data transmissions exceed this figure at any time in the contract year the amount owed by the Beneficiary to SoftcrowServices will be increased by SoftcrowServices with effect from the start of the calendar month concerned by an amount determined in accordance with the tariff structure generally applied by SoftcrowServices at that time.

6. The costs of Deposit Management (optional) are €87.50 a calendar quarter, excluding value-added tax (BTW), and are payable in advance annually. These costs shall be borne by the Beneficiary.

7. The Beneficiary owes SoftcrowServices a fee of €400, exclusive of VAT, for carrying out a Random Check. These costs are based on the expectation that a maximum of four hours will be needed for the check. If it transpires that more than four hours is needed for the Random Check, SoftcrowServices will be entitled to adjust the fee on a pro rata basis. The travelling time and travelling expenses incurred by SoftcrowServices shall be borne by the Beneficiary.

8. The Beneficiary owes SoftcrowServices a fee of €2,600, exclusive of VAT, for carrying out a Verification Examination. The costs of the Verification Examination are based on the standard Verification Examination as described in **Appendix 2**, and the assumption, based on the experience of SoftcrowServices, that the Auditor in average will not need more than 8 hours to prepare, execute and report on the agreed Verification Examination. If it transpires that more than 8 hours is needed for the Verification Examination, SoftcrowServices shall be entitled to charge for the extra hours on the basis of a daily fee of €1,875, exclusive of VAT. The travelling time and travelling expenses incurred by the Auditor shall be borne by the Beneficiary.

9. Payment of the invoice of SoftcrowServices should be made within thirty (30) days of the date of the invoice. Any right of set-off or suspension on the part of the Parties is expressly excluded.

Art. 22. Adjustment of fees

1. SoftcrowServices is entitled annually to adjust the fee specified in article 21 as of 1 January of the new contract year on the basis of the changes to the 'Consumer Price Index – All Households' as determined by Statistics Netherlands (CBS). The fee adjusted in this way will never, however, be less than the level of the preceding year.

2. SoftcrowServices will be entitled every two years, for the first time on 1 January 2020, to review the fees owed pursuant to article 21 on the basis of market and service trends. SoftcrowServices shall make an offer for this purpose to the Beneficiary. If the Beneficiary does not wish to accept the offer made by SoftcrowServices it will be entitled to terminate the registration with SoftcrowServices as of the due date.

Art. 23. Term of the Agreement

1. The Agreement shall start on the day of signature by the Parties and shall last, subject to the provisions of article 23.2, for as long as the Beneficiary uses the SaaS Service.

2. The Agreement may, subject to a period of three months' notice before the expiry of the period for which the SecureStorage/SecureStorageBeneficiary fee has been charged and was paid to SoftcrowServices, be terminated by the Parties by means of a registered letter to SoftcrowServices, in which they jointly declare that they wish to end the Agreement.

3. The Agreement may be terminated with immediate effect by SoftcrowServices by means of written notice, without notice of default or recourse to the courts, if the costs referred to in article 21 are not paid or not paid in time, and neither the Supplier nor the Beneficiary has paid them within a reasonable period after the written notice of default by SoftcrowServices.

4. After the Agreement has been terminated in the manner described at 2 and 3 above, SoftcrowServices shall destroy the Deposit and the DepositBeneficiary. SoftcrowServices shall confirm the destruction of the Deposit to the Supplier at the last address notified by the Supplier to SoftcrowServices. The destruction of the Deposit and the DepositBeneficiary does not affect the payment obligation of the Supplier or the Beneficiary pursuant to article 21.

5. This Agreement will end automatically without the need for any notice or other act of termination if and when the SoftcrowServices is declared bankrupt.

6. If SoftcrowServices is declared bankrupt, the Parties shall conclude an agreement that is substantively the same as this Agreement with the foundation known as Stichting Softcrow Continuïteit Services, which has its seat at Hettenheuvelweg 8, 1101 BN Amsterdam and is not a party to this Agreement, as a result of which Stichting Softcrow Continuïteit Services will take the place of SoftcrowServices. The Agreement with Stichting Softcrow Continuïteit Services will then be deemed to be a new agreement.

7. If the Agreement is terminated in the manner described at 5, Stichting Softcrow Continuïteit Services as referred to at 6 shall hold the Deposit and the DepositBeneficiary on behalf of itself and of the Parties rather than on behalf of SoftcrowServices.

8. When the Agreement is terminated, SoftcrowServices shall not be obliged to refund the fee(s) paid to it.

Art. 24. Transfer of rights

1. The Supplier undertakes to transfer its rights to the SaaS Service and/or the Software to third parties only after giving written notification to the Beneficiary and SoftcrowServices and also to arrange for the provisions of the Agreement and of the SaaS Service to be part of any transfer of the rights to the SaaS Service and the Software to third parties.

Art. 25. Force Majeure

1. Softcrow is not obliged to perform a contractual obligation if it is prevented from doing so by force majeure. Force majeure affecting Softcrow is deemed to include: (i) force majeure affecting suppliers of Softcrow; (ii) non-performance by suppliers used by Softcrow as prescribed by the Supplier and/or the Beneficiary; (iii) the defectiveness of things, equipment, software or materials of third parties used by Softcrow as prescribed by the Beneficiary and/or the Supplier or made available to Softcrow by the Supplier and/or the Beneficiary; (iv) seizure, attachment and/or judicial sequestration by a third party of property in the possession of (a) Softcrow, (b) a supplier used by Softcrow, and/or (c) another third party who is of direct or indirect importance to the performance of this agreement; (v) execution by a third party of a court order granting it leave to take provisional or definitive measures to protect its intellectual property right (or alleged right) in relation to property in the possession of (a) Softcrow, (b) a supplier used by Softcrow, and/or (c) another third party who is of direct or indirect importance to the performance of this agreement; (vi) government measures and court judgments that hinder the performance of this agreement either de facto and/or de jure; (vii) power cuts; (viii) a failure of the internet, a computer network or telecommunication facilities;

(ix) computer hacking and other disruptions beyond the control of Softcrow to and/or attacks on the systems operated by Softcrow, such as (but not limited to) ransomware, DDoS and malware; (x) war; (xi) strike; (xii) general transport problems; (xiii) fire; and (xiv) natural disasters.

Art. 26. Choice of law and forum

1.   The Agreement shall be governed by Dutch law. The applicability of the Vienna Sales Convention 1980 (CISG) is excluded.

2.   Any disputes between the Parties in respect of the Agreement shall be referred to the competent court in the district of Amsterdam.

3.   If any provision of the Agreement should prove to be invalid, the other provisions shall remain in force.

Art. 27. General

1.   The general conditions of delivery and payment of the Supplier, SoftcrowServices and the Beneficiary respectively or any other general or special conditions are not applicable.

2.   The Appendices to the Agreement form part of the Agreement. In the event of any inconsistency between the provisions of the Agreement and the contents of the Appendices, the text of the Agreement shall prevail unless expressly provided otherwise.

3.   If the content of the SLA differs from the content of the Agreement, the provisions of the Agreement shall prevail.

4.   Except where provision is made in the Agreement for the Parties to communicate by registered letter, the Parties acknowledge that they have agreed to use e-mail as the means of communication concerning matters relating to the performance of the Agreement. Oral statements, undertakings or arrangements will have no legal force.

5.   A failure by one of the Parties to require performance of any provision within a period specified in the Agreement will not affect the right subsequently to demand for months, unless the relevant party has expressly assented by registered letter to the non-performance.

6.   All costs of a judicial or extrajudicial nature, including the costs of legal assistance, which any party incurs as a result of the non-performance of the Agreement by one of the other Parties shall be borne by the party in default.

Supplier   Softcrow Trusted Electronic Services B.V.

Name: Name:

Date: Date:

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- Description of the SaaS Infrastructure

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Appendix 5

- Model instrument creating a usufruct on intellectual property rights

Appendix 1 – Description of SaaS Infrastructure

A detailed statement of the Infrastructure required for the SaaS Service, including a description of:

- the hardware (a statement of the producer, type designation, production number, settings to be entered and all other information necessary for the use of the hardware);

- the software configuration and settings;

- the communication protocols and interfaces;

- the database, data model and database management system;

- the materials needed for the installation and implementation;

and the information required for:

- understanding the arrangement, infrastructure and configuration.

- defining and altering new Beneficiary accounts in such a way that the new accounts allow the use of the SaaS Service.

Appendix 2 - Description of standard Verification Examination

In the case of the standard examination the Deposit is made available from SecureStorage for downloading to the Supplier.

In the presence of an Auditor engaged by SoftcrowServices the Supplier will download the Deposit. After the downloading, the network environment will be uncoupled to create an insulated environment. An insulated environment is a stand-alone environment in which the process of the Verification Examination can be conducted in a manner capable of being monitored and measured by the Auditor.

The Supplier will then decrypt the encrypted Deposit using the key supplied by the Beneficiary to the Auditor. The Auditor will ascertain whether the components listed on the Deposit Specification Form are present.

NB: It is not the function of the Auditor to determine whether the components are correct and complete.

The source code of the Software obtained from the decrypted Deposit will then be loaded in the development environment as used by the Supplier and will be compiled in the presence of the Auditor.

The development environment may be of two kinds:

- a bare machine on which all (development) software must still be installed, or

- a machine with a partially or wholly preinstalled development environment.

In the case of a preinstalled environment the Auditor checks that a detailed description of the environment and its parametrisation is present in the decrypted Deposit.

If the Deposit was modified or expanded during the Verification Examination in order to achieve the positive result referred to in article 7, paragraph 6, the Supplier will encrypt and upload to SecureStorage the Deposit and relevant Deposit Specification Form pursuant to article 4. The Auditor and the Supplier will inform SoftcrowServices of this additional Deposit before the uploading to SecureStorage.

N.B.

In the case of the standard examination the Auditor only checks for the presence of technical documentation and does not therefore examine or make any pronouncements about the quality and completeness of this documentation.

In the case of the standard examination, the Auditor only checks whether the production software can be compiled. The Auditor does not examine and therefore makes no pronouncements about the maintainability of the Software.

The Beneficiary is himself primarily liable for determining whether the software generated during the Verification Examination corresponds with the Software operated in its production environment.

The Beneficiary may for this reason request SoftcrowServices to widen the scope of the Auditor's verification remit to include checking whether the generated software corresponds with the production environment.

For the determination of the correspondence with the production environment, a choice may, in principle, be made between three types of comparison:

- a binary comparison;

- a comparison at file level (presence and scope), and/or

- a functional comparison.

Which is the most suitable method or combination of methods will have to be decided by the parties in consultation among themselves.

Prior to the Verification Examination the Beneficiary is entitled:

- to adjust, on the basis of the powers of the Auditor under article 7.4, the scope of the engagement for the Verification Examination;

- to request the Auditor to make an extra copy, on an information carrier provided by the Supplier, of the version of the Software generated during the Verification Examination exclusively in order in this way to establish the correspondence with the Software installed on the Beneficiary's system.

As regards the delivery of third party software which has been installed or is required for the Verification Examination, it should be noted very emphatically that the software in question is exclusively a back-up copy and that it is clear to both the Beneficiary and SoftcrowServices that no rights whatever are granted by the Supplier. If the Beneficiary intends to use this third party software, it must conclude a licence agreement for this purpose with the supplier of that software before using it.

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Appendix 3 - Contacts

The various parties designate the following contacts for the purposes of the Agreement:

Beneficiary:	
Name of contact 1	
Address:	
E-mail:	
Telephone number (landline):	
Telephone number (mobile):	
Name of contact 2	
Address:	
E-mail:	
Telephone number (landline):	
Telephone number (mobile):	
Supplier:	
Name of contact 1	
Address:	
E-mail:	
Telephone number (landline):	
Telephone number (mobile):	
Name of contact 2	
Address:	
E-mail:	
Telephone number (landline):	
Telephone number (mobile):	
SoftcrowServices:	
Name of contact 1	Michel Kiès, Hettenheuvelweg 8, Amsterdam-Zuidoost
Address	**michel@softcrow.com**
E-mail	+31206962050
Telephone number (landline):	+31654956711
Telephone number (mobile):	
Name of contact 2	
Address	Gaston Vankan, Hettenheuvelweg 8, Amsterdam-Zuidoost
E-mail	**gaston@softcrow.com**
Telephone number (landline):	+31206962050
Telephone number (mobile):	+31653758981

Appendix 4 - Confirmation of registration to be sent to the Beneficiary

Beneficiary

attn.

address

town/city

Amsterdam,

Re: Confirmation of registration

Dear <…>,

With reference to the SLA concluded between you and (Supplier) concerning the <…> SaaSA Service, we confirm that you have been registered by (Supplier) with Softcrow Trusted Electronic Services B.V. as Beneficiary as referred to in article 1, paragraph 3, of the escrow agreement concluded between (Supplier) and Softcrow Trusted Electronic Services B.V., referred to below as the Agreement. Attached please find a copy of the Agreement. We would kindly request you to sign the enclosed copy of this letter and return it to us. By signing this confirmation of registration you acknowledge that you agree with and are bound by the provisions of the Agreement.

(Beneficiary) does/does not* wish to make use of the Deposit Management offered in article 9.

We will keep you informed of any changes to the Deposit.

We trust that we have been of service to you.

Yours sincerely,

	In confirmation of agreement:
Softcrow Trusted Electronic Services B.V.	Beneficiary

Name: | Name:

* Please delete as applicable