Zertic
Terms and Conditions
License agreement

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License Agreements Terms and Conditions

1. Definitions

Except to the extent expressly provided otherwise, in this License Agreement:

"Acceptance Criteria" means: the Platform and Hosted Services conforming in all material respects with the SLA;

"Acceptance Period" means a period of 30 Business Days following the making available of the Hosted Services to Client for the purposes of testing in accordance with Clause 4 or any repeated making available of the Hosted Services to Client for the purposes of testing in accordance with Clause 4, or such other period or periods as the parties may agree in writing;

"Acceptance Tests" means a set of tests designed to establish whether the Hosted Services meet the Acceptance Criteria, providing that the exact form of the tests shall be determined and documented by Client acting reasonably, and communicated to the Provider in advance of the carrying out of the tests;

"Account" means an account enabling a person to access and use the Hosted Services, including both administrator accounts and user accounts;

"Affiliate" means an entity that Controls, is Controlled by, or is under common Control with the relevant entity;

"License Agreement" means this license agreement including any Schedules, and any amendments to this License Agreement from time to time;

"Business Day" means any weekday other than a bank or public holiday in the Netherlands;

"Business Hours" means the hours of 08:00 to 18:00 GMT/BST +1 on a Business Day;

"Charges" means the following amounts:

(a) the amounts specified at the Item numbers at the first page of this document;

(b) if other amounts than as specified in (a) are agreed in writing by the parties from time to time; and

(c) amounts calculated by multiplying the Provider's standard time-based charging rates (as notified by the Provider to Client before the date of this License Agreement) by the time spent by the Provider's personnel performing the Support Services (rounded down by the Provider to the nearest full hour);

"Confidential Information" means the Provider Confidential Information and the Customer Confidential Information; Both Parties are aware that Confidential Information were not previously known, whether in whole or in part, nor readily accessible, are therefore of economic value, are protected by appropriate confidentiality measures on the part of the owner, and in which the owner has a legitimate interest in keeping them confidential. Unless a confidential information under this Agreement meets the requirements of a trade secret as defined by applicable laws, such information shall be subject to the confidentiality obligations under this Agreement.

"Control" means the legal power to control (directly or indirectly) the management of an entity (and "Controlled" should be construed accordingly);

"Customer Confidential Information" means:

(a) any information disclosed by or on behalf of Client to the Provider at any time before the termination of this License Agreement (whether disclosed in writing, orally or otherwise) that at the time of disclosure:

(b) was marked or described as "confidential"; or

(c) should have been reasonably understood by the Provider to be confidential; and

(d) the Customer Data;

(e) "Customer Data" means all data, works and materials:

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uploaded to or stored on the Platform by Client; transmitted by the Platform at the instigation of Client; supplied by Client to the Provider for uploading to, transmission by or storage on the Platform; or generated by the Platform as a result of the use of the Hosted Services by Client;

"Customer Indemnity Event" has the meaning given to it in Clause 25.3;

"Customer Personal Data" means Personal Data that is processed by the Provider on behalf of Client in relation to this License Agreement;

"Customer Representatives" means the person or persons identified as such in an SLA, and any additional or replacement persons that may be appointed by Client giving to the Provider written notice of the appointment;

"Customer Systems" means the hardware and software systems of Client that interact with, or may reasonably be expected to interact with, the Hosted Services;

"Customization" means a customization of the Hosted Services, whether made through the development, configuration or integration of software, or otherwise;

"Documentation" means the documentation for the Hosted Services produced by the Provider and delivered or made available by the Provider to Client;

"Effective Date" means the date of execution of this License Agreement;

"Expenses" means the travel, accommodation and subsistence expenses that are reasonably necessary for, and incurred by the Provider exclusively in connection with, the performance of the Provider's obligations under this License Agreement;

"Hosted Services" means Zertic, as specified in the SLA, which will be made available by the Provider to Client as a service via the internet in accordance with this License Agreement;

"Hosted Services Defect" means a defect, error or bug in the Platform having a material adverse effect on the appearance, operation, functionality, or performance of the Hosted Services, but excluding any defect, error or bug caused by or arising as a result of:

(a) any act or omission of Client or any person authorized by Client to use the Platform or Hosted Services;

(b) any use of the Platform or Hosted Services contrary to the Documentation, whether by Client or by any person authorized by Client;

(c) a failure of Client to perform or observe any of its obligations in this License Agreement; and/or

(d) an incompatibility between the Platform or Hosted Services and any other system, network, application, program, hardware, or software not specified as

compatible in the SLA;

"SLA" means the specification for the Platform and Hosted Services set out in the Item numbers at the first page of this document and in the Documentation;

"Intellectual Property Rights" means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trademarks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi- conductor topography rights and rights in designs);

"Maintenance Services" means the general maintenance of the Platform and Hosted Services, and the application of Updates and Upgrades;

"Minimum Term" means, in respect of this License Agreement, the period of 12 months beginning on the Effective Date;

"Zertic App" means the online application known as Zertic application that is made available by the Provider through hosting;

"Permitted Purpose" means using Zertic for the entire certification-process;

"Personal Data" has the meaning given to it in the General Data Protection Regulation (GDPR);

"Platform" means the platform managed by the Provider and used by the Provider to provide the Hosted Services, including the application and database software for the Hosted Services, the system and server software used to provide the Hosted Services, and the computer hardware on which that application, database, system and server software is installed;

"Provider Confidential Information" means:

(a) any information disclosed by or on behalf of the Provider to Client at any time before the termination of this License Agreement (whether disclosed in writing, orally or otherwise) that at the time of disclosure was marked or described as "confidential" or should have been understood by Client (acting reasonably) to be confidential; and

(b) the terms of this License Agreement;

Provider Indemnity Event" has the meaning given to it in Clause 26.1;

"Provider Representatives" means the person or persons identified as such in the SLA and contract, and any additional or replacement persons that may be appointed by the Provider giving to Client written notice of the appointment;

"Remedy Period" means a period of 20 Business Days

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following Client giving to the Provider a notice that the Hosted Services have failed the Acceptance Tests, or such other period as the parties may agree in writing;

"Schedule" means any schedule attached to the main body of this License Agreement;

"Services" means any services that the Provider provides to Client, or has an obligation to provide to Client, under this License Agreement, including as set out in an SLA;

"Set Up Services" means the configuration, implementation and integration of the Hosted Services in accordance with SLA;

"SLA" means the Service Level Agreement specification for the Platform and Hosted Services;

"Support Services" means support in relation to the use of, and the identification and resolution of errors in, the Hosted Services, but shall not include the provision of training services;

"Supported Web Browser" means the current release from time to time of Mozilla Firefox or Google Chrome, or any other web browser that the Provider agrees in writing shall be supported;

"Term" means the term of this License Agreement, commencing in accordance with Clause 2.1 and ending in accordance with Clause 2.2;

"Third-Party Services" means any hosted or cloud services provided by any Third-Party that may transmit data to and/or from the Hosted Services.

"Update" means a hotfix, patch or minor version update to any Platform software; and

"Upgrade" means a major version upgrade of any Platform software.

2. Term

2.1 This License Agreement shall come into force upon the Effective Date.

2.2 This License Agreement shall continue in force for 3 years, after this period a yearly automatic prolongation is applied. This clause is subject to termination in accordance with Clause 28 or any other provision of this License Agreement.

3. Set Up Services

3.1 The Provider shall provide the Set Up Services to Client.

3.2 The Provider shall use all best endeavours to ensure that the Set Up Services are provided upon or promptly following the Effective Date.

3.3 The customer acknowledges that a delay in Client

performing its obligations in this License Agreement may result in a delay in the performance of the Set Up Services; and subject to Clause 26.1 the Provider will not be liable to Client in respect of any failure to meet the Set Up Services timetable to the extent that that failure arises out of a delay in Client performing its obligations under this License Agreement.

3.4 Subject to any written license agreement of the parties to the contrary, any Intellectual Property Rights that are created by the Provider and arise out of the performance of the Set Up Services by the Provider shall be owned by Provider.

4. Acceptance procedure

4.1 During each Acceptance Period, Client shall carry out the Acceptance Tests, testing, for instance, if Services are fit for the Permitted Purpose.

4.2 The Provider shall provide to Client at the Customer's cost and expense reasonable assistance and co-operation in relation to the carrying out of the Acceptance Tests as Client may reasonably request.

4.3 Before the end of each Acceptance Period, Client shall give to the Provider a written notice specifying whether the Hosted Services have passed or failed the Acceptance Tests.

4.4 If Client fails to give to the Provider a written notice in accordance with Clause 4.3, then the Hosted Services shall be deemed to have passed the Acceptance Tests.

4.5 If Client notifies the Provider that the Hosted Services have failed the Acceptance Tests, then Client shall provide to the Provider, at the same time as the giving of the notice, written details of the results of the Acceptance Tests including full details of the identified failure.

4.6 If Client notifies the Provider that the Hosted Services have failed the Acceptance Tests:

(a) if the Provider acting reasonably agrees with Client that the Hosted Services do not comply with the Acceptance Criteria, then the Provider shall, at its cost, correct the issue and make available the corrected Hosted Services to Client before the end of the Remedy Period for a further round of Acceptance Tests; or

(b) otherwise, then the parties shall meet as soon as practicable and in any case before the expiry of the Remedy Period and use their best endeavours to agree whether the Hosted Services do not comply with the Acceptance Criteria, and if appropriate a plan of action reasonably satisfactory to both

parties, and they shall record any license agreement reached in writing.

4.7 Notwithstanding the other provisions of this Clause 4, but subject to any written License agreement of the parties to the contrary, the maximum number of rounds of Acceptance Tests under this Clause 4 shall be 3, and if the Acceptance Criteria have not been met by the end of the final round of Acceptance Tests, the Provider shall be deemed to be in material breach of this License Agreement.

4.8 If Client notifies the Provider that the Hosted Services have passed, or are deemed to have passed, the Acceptance Tests under this Clause 4, then subject to Clause 26.1 Client will have no right to make any claim under or otherwise rely upon any warranty given by the Provider to Client in this License Agreement in relation to the specification and performance of the Hosted Services, unless Client could not reasonably have been expected to have identified the breach of that warranty during the testing process. The warranty obligations of the Provider under clauses 23.2(f) and 23.2(g) shall remain active and shall not be waived by these Acceptance Tests.

5. Hosted Services

5.1 The Provider shall create an Account for Client and shall provide to the Customer login details for that Account upon the completion of the Set-Up Services.

5.2 The Provider hereby grants to Client a worldwide, non-exclusive license to use the Hosted Services for the internal business purposes of Client in accordance with the Documentation during the Term.

5.3 The license granted by the Provider to the Customer under Clause 5.2 is subject to the following limitations:

5.4 the Hosted Services may only be used by the officers, employees, agents and subcontractors of either Client or an Affiliate of the Customer;

5.5 the Hosted Services may only be used by the named users identified in User Management Module, providing that Client may change, add, or remove a designated named user in accordance with the procedure set out therein; and

5.6 the Hosted Services shall not be used at any point in time by more than the number of concurrent users specified in User Management Module, providing that Client may add or remove concurrent user licenses in accordance with the procedure set out therein.

5.7 Except to the extent expressly permitted in this

License Agreement or required by law on a non-excludable basis, the license granted by the Provider to the Customer under Clause 5.2 is subject to the following prohibitions:

5.8 Client shall not sub-license its right to access and use the Hosted Services; API-connections do not count as sub-licensing.

5.9 Client shall not permit any unauthorized person to access or use the Hosted Services;

5.10 Client shall not republish or redistribute any of the Provider's content or material from the Hosted Services; and

5.11 Client shall not make any alteration to the Platform, except as permitted by the Documentation.

5.12 The customer shall use reasonable endeavours, including reasonable security measures relating to Account access details, to ensure that no unauthorized person may gain access to the Hosted Services using an Account.

5.13 The customer shall comply with Schedule 2 (Acceptable Use Policy) and shall ensure that all persons using the Hosted Services with the authority of Client or by means of an Account comply with Schedule 2 (Acceptable Use Policy).

5.14 The customer shall not use the Hosted Services in any way that causes, or may cause, damage to the Hosted Services or Platform or impairment of the availability or accessibility of the Hosted Services.

5.15 The customer shall not use the Hosted Services:

(a) in any way that is unlawful, illegal, fraudulent, or harmful; or

(b) in connection with any unlawful, illegal, fraudulent, or harmful purpose or activity.

5.16 For the avoidance of doubt, Client has no right to access the software code (including object code, intermediate code, and source code) of the Platform, either during or after the Term.

6. Customizations

6.1 The Provider and the Customer may agree that the Provider shall design, develop, and implement a Customization or Customizations in accordance with a specification and project plan agreed in writing by the parties.

6.2 All Intellectual Property Rights in the Customizations shall, as between the parties, be the exclusive property of the Provider (unless the parties agree otherwise in writing).

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6.3 From the time and date when a Customization is first delivered or made available by the Provider to Client, the Customization shall form part of the Platform, and accordingly from that time and date the Customer's rights to use the Customization shall be governed by Clause 5.

6.4 The customer acknowledges that the Provider may make any Customization available to any of its other customers or any other third party, except to the extent that the Customizations are based in part upon any Confidential Information.

7. Maintenance Services

7.1 The Provider shall provide the Maintenance Services to Client during the Term.

7.2 The Provider may suspend the provision of the Maintenance Services if any amount due to be paid by Client to the Provider under this License Agreement is overdue, and the Provider has given to Client at least 60 days' written notice, following the amount becoming overdue, of its intention to suspend the Maintenance Services on this basis.

8. Support Services

8.1 The Provider shall provide the Support Services to Client during the Term.

8.2 The Provider may suspend the provision of the Support Services if any amount due to be paid by Client to the Provider under this License Agreement is overdue, and the Provider has given to Client at least 60 days' written notice, following the amount becoming overdue, of its intention to suspend the Support Services on this basis.

9. Obligations

The Customer:

9.1 Save to the extent that the parties have agreed otherwise in writing, Client shall provide to the Provider, or procure for the Provider, such:

(a) co-operation, support, and advice; and

(b) information and documentation;

as are reasonably necessary to enable the Provider to perform its obligations under this License Agreement.

9.2 The customer has to support the provider to fulfill its obligations under this License Agreement.

The Provider:

9.3 Shall, in delivering the Services, exercise the standards of skill, care and diligence that would be expected of an expert provider of the Services, and shall provide the Services in accordance with relevant industry best practice, industry standards and applicable laws.

10. Customer Systems

10.1 The customer acknowledges that the Hosted Platform is only supported on systems that comply with the system requirements (including the use of a Supported Web Browser).

10.2 Provider will not have any liability to Client to the extent that any issue is caused by the Customer Systems not complying with the requirements in all material respects, except where any changes are agreed in writing by the Provider.

11. Customer Data

11.1 The customer hereby grants to the Provider a non-exclusive permission to copy, reproduce, store, distribute, publish, export, adapt, edit and translate the Customer Data to the extent reasonably required for the performance of the Provider's obligations and the exercise of the Provider's rights under this License Agreement, together with the right to delegate permissions to its hosting, connectivity and telecommunications service providers to the extent reasonably required for the performance of the Provider's obligations and the exercise of the Provider's rights under this License Agreement. The handling of Customer Data is subject to the relevant legislation in the country of hosting (e.g. GDPR in the E.U. and PIPEDA in Canada).

11.2 The Customer warrants to the Provider that the Customer Data when used by the Provider in accordance with this License Agreement will not infringe the Intellectual Property Rights or other legal rights of any person, and will not breach the provisions of any law, statute, or regulation, in any jurisdiction and under any applicable law.

11.3 The Provider shall create a back-up copy of the Customer Data at least daily, shall ensure that each such copy is sufficient to enable the Provider to restore the Hosted Services to the state they were in at the time the back-up was taken, and shall retain and securely store each such copy for a minimum period of 30 days. The Provider ensures to fulfil these obligations according to the regulations applicable to the country in which the system is hosted.

11.4 Within the period of 1 Business Day following receipt

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of a written request to the Provider's helpdesk from Client, the Provider shall use all reasonable endeavours to restore to the Platform the Customer Data stored in any back-up copy created and stored by the Provider in accordance with Clause 11.3. The customer acknowledges that this process will overwrite the Customer Data stored on the Platform prior to the restoration. Except where the need to restore the Customer Data arises out of an act or omission of the Provider this service will be invoiced by the Provider to Client. If the service can't be fulfilled in time, the service is free as is the license fee for the downtime period.

12. Integrations with Third-Party Services

12.1   The Provider may provide integrations for additional Third-Party Services with the Hosted Services at any time.

12.2   The Provider may remove, suspend, or limit any Third-Party Services integrations at any time in its sole discretion.

12.3   The supply of Third-Party Services shall be under a separate contract or arrangement between Client and the relevant third party. The Provider does not contract to supply the Third-Party Services and is not a party to any contract for, or otherwise responsible in respect of, the provision of any Third- Party Services. Fees may be payable by Client to the relevant Third-Party in respect of the use of Third-Party Services.

12.4   The customer acknowledges that:

a) The integration of Third-Party Services may entail the transfer of Customer Data from the Hosted Services to the relevant Third-Party Services; and

b) the Provider has no control over, or responsibility in respect of, any disclosure, modification, deletion, or other use of Customer Data resulting from any integration with any Third-Party Services.

12.5   Without prejudice to its other obligations under this Clause 12, Client shall ensure that it has in place the necessary contractual safeguards to ensure that both:

12.6   the transfer of relevant Customer Personal Data to a provider of Third-Party Services is lawful; and

12.7   the use of relevant Customer Personal Data by a provider of Third-Party Services is lawful.

12.8   The customer shall have the opportunity to consent to transfers of Customer Data to any Third-Party Services operator. The Provider shall ensure that

such transfers shall not take place without the consent of Client.

12.9   The use of some features of the Hosted Services may depend upon Client enabling and agreeing to integrations between the Hosted Services and Third-Party Services.

12.10   The Customer warrants to the Provider that the transfer of Customer Data by the Provider to a provider of Third-Party Services in accordance with this Clause 12 within the EEA, to a country that is the subject of an adequacy decision or that are covered by an appropriate safeguard, or are covered by a derogation for specific situations under the GDPR will not infringe any person's legal or contractual rights and will not put the Provider in breach of any applicable laws.

12.11   Additional Charges may be payable by Client to the Provider in respect of a Third-Party Services integration.

12.12   Save to the extent that the parties expressly agree otherwise in writing and subject to Clause 26.1:

12.13   the Provider gives no warranties or representations in respect of any Third-Party Services; and

12.14   the Provider shall not be liable to Client in respect of any loss or damage that may be caused by any Third-Party Services or any provider of Third-Party Services.

13.   Zertic Application

13.1   The parties acknowledge and agree that the use of the Zertic Application including customer portals shall be subject to the end user license agreement.

14.   No assignment of Intellectual Property Rights

14.1   Nothing in this License Agreement shall operate to assign or transfer any Intellectual Property Rights from the Provider to Client, or from Client to the Provider.

15.   Representatives

15.1   The Provider shall ensure that all instructions given by the Provider in relation to the matters contemplated in this License Agreement will be given by a Provider Representative to a Customer Representative, and Client:

15.2   may treat all such instructions as the fully authorized instructions of the Provider; and

15.3   may decline to comply with any other instructions in

relation to that subject matter.

15.4 The customer shall ensure that all instructions given by Client in relation to the matters contemplated in this License Agreement will be given by a Customer Representative to a Provider Representative, and the Provider:

15.5 may treat all such instructions as the fully authorized instructions of Client;

(a) and may decline to comply with any other instructions in relation to that subject matter.

16. Management

16.1 The parties shall hold management meetings at each party's offices, by telephone conference or using internet-based conferencing facilities at the reasonable request of either party.

16.2 A party requesting a management meeting shall give to the other party at least 10 Business Days' written notice of the meeting.

16.3 Wherever necessary to enable the efficient conduct of business, the Provider shall be represented at management meetings by at least 1 Provider Representative and Client shall be represented at management meetings by at least 1 Customer Representative.

17. Charges

17.1 The customer shall pay the Charges to the Provider in accordance with this License Agreement.

17.2 If the Charges are based in whole or part upon the time spent by the Provider performing the Services, the Provider shall obtain the Customer's written consent before performing Services that result in any estimate of time-based Charges given to Client being exceeded or any budget for time-based Charges agreed by the parties being exceeded; and unless Client agrees otherwise in writing, Client shall not be liable to pay to the Provider any Charges in respect of Services performed in breach of this Clause 17.2.

17.3 All amounts stated in or in relation to this License Agreement are, unless the context requires otherwise, stated exclusive of any applicable value added taxes, which will be added to those amounts and payable by Client to the Provider.

18. Timesheets

The Provider shall:

18.1 ensure that the personnel providing Services, the

Charges for which will be based in whole or part upon the time spent in the performance of those Services, complete reasonably detailed records of their time spent providing those Services; and retain such records during the Term, and for a period of at least 12 months following the end of the Term.

18.2 Within 10 Business Days following receipt of a written request, the Provider shall supply to the Customer copies of such of the timesheets referred to in Clause 18.1 and in the Provider's possession or control as Client may specify in that written request.

19. Payments

19.1 The Provider shall issue invoices for the Charges to Client monthly.

19.2 The customer shall pay the Charges, not subject to a good-faith dispute, to the Provider within the period of 30 days following the issue of an invoice in accordance with this Clause 19.

19.3 The customer shall pay the Charges by debit card, credit card, direct debit, or bank transfer (using such payment details as are notified by the Provider to Client from time to time).

19.4 If Client does not pay any amount properly due to the Provider under this License Agreement, the Provider may:

19.5 Claim interest and statutory compensation from Client;

20. Confidentiality obligations

The Provider shall:

20.1 keep the Customer Confidential Information strictly confidential;

20.2 not disclose the Customer Confidential Information to any person without the Customer's prior written consent, and then only under conditions of confidentiality no less onerous than those contained in this License Agreement;

20.3 use the same degree of care to protect the confidentiality of the Customer Confidential Information as the Provider uses to protect the Provider's own confidential information of a similar nature, being at least a reasonable degree of care;

20.4 act in good faith at all times in relation to the Customer Confidential Information; and

20.5 not use any of the Customer Confidential Information for any purpose other than the Permitted Purpose.

The customer shall:

20.6   keep the Provider Confidential Information strictly confidential;

20.7   not disclose the Provider Confidential Information to any person without the Provider's prior written consent, and then only under conditions of confidentiality no less onerous than those contained in this License Agreement;

20.8   use the same degree of care to protect the confidentiality of the Provider Confidential Information as Client uses to protect the Customer's own confidential information of a similar nature, being at least a reasonable degree of care;

20.9   act in good faith at all times in relation to the Provider Confidential Information; and not use any of the Provider Confidential Information for any purpose other than the Permitted Purpose.

20.10 Notwithstanding Clauses 20.1 and 20.2, each Party shall have the right to provide such Confidential Information to its employees, agents and consultants and those of its Affiliated Companies who need the Confidential Information for the Purpose of the Agreement and are bound to confidentiality ("Authorized Representatives"). Each Party shall be liable for violations of the Agreement by its authorized representatives as if it were its own.

20.11 No obligations are imposed by this Clause 20 with respect to a party's Confidential Information if that Confidential Information:

   (a)   is known to the other party before disclosure under this License Agreement and is not subject to any other obligation of confidentiality;

   (b)   is or becomes publicly known through no act or default of the other party; or

   (c)   is obtained by the other party from a Third-Party in circumstances where the other party has no reason to believe that there has been a breach of an obligation of confidentiality.

20.12 The restrictions in this Clause 20 do not apply to the extent that any Confidential Information is required to be disclosed by any law or regulation, by any judicial or governmental order or request, or pursuant to disclosure requirements relating to the listing of the stock of either party on any recognized stock exchange.

20.13 Upon the termination of this License Agreement, each party shall immediately cease to use the other party's Confidential Information.

20.14 Following the termination of this License Agreement, and within 15 Business Days following the date of

receipt of a written request from the other party, the relevant party shall destroy or return to the other party (at the other party's option) all media containing the other party's Confidential Information and shall irrevocably delete the other party's Confidential Information from its computer systems except for the copies kept on back-up servers.

20.15 The provisions of this Clause 20 shall continue in force for a period of 3 years following the termination of this License Agreement, at the end of which period they will cease to have effect.

20.16 In addition to any other remedies or relief , if either party breaches Clauses 20.1 or 20.2, it will be required to account for and pay over to the other party all compensation, profits, monies, accruals, increments or other benefits derived or received by it as a result of any such breach and the other party will be entitled to injunctive or other equitable relief to prevent further breaches of those obligations.

21. Publicity

21.1   Neither party may make any public disclosures relating to this License Agreement or the subject matter of this License Agreement (including disclosures in press releases, public announcements, and marketing materials) without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed.

21.2   Nothing in this Clause 21 shall be construed as limiting the obligations of the parties under Clause 20.

22. Data protection

22.1   The Customer warrants to the Provider that it has the legal right to disclose all Personal Data that it does in fact disclose to the Provider under or in connection with this License Agreement, and that the processing of that Personal Data by the Provider for the Permitted Purpose in accordance with this License Agreement will not breach any applicable data protection or data privacy laws (including the E.U. General Data Protection Regulation (GDPR) or equivalent national implementations.

22.2   The Provider warrants to Client that:

   (a)   it will act only on instructions from Client in relation to the processing of Customer Personal Data;

   (b)   it has in place appropriate security measures (both technical and organizational) against unlawful or unauthorized processing of Customer Personal Data and against loss or corruption of Customer Personal Data;

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(c) it will only process the Customer Personal Data for the purposes of performing its obligations and exercising its rights under this License Agreement;

(d) it will process the Customer Personal Data in compliance with all applicable laws; and

(e) it will not transfer or permit the transfer of Customer Personal Data to any place outside the committed legal area of the customer without the prior written consent of Client.

(f) it will use hosting providers that are committed to the GDPR law.

22.3 The Provider shall notify Client as soon as practicable if:

(a) any of the Customer Personal Data is subject to unauthorized access, lost or destroyed, or becomes damaged, corrupted or unusable or if it reasonably suspects that any of the foregoing has occurred;

(b) the Provider receives any complaint or regulatory notice which relates to the processing of any of the Customer Personal Data; or

(c) the Provider receives a request from a data subject for access to any of the Customer Personal Data.

22.4 The Provider shall co-operate with Client in relation to:

(a) an investigation into any of the matters in Clause 22.2;

(b) any request from Client to amend or delete any of the Customer Personal Data;

(c) any complaint or regulatory notification relating to the processing of any of the Customer Personal Data; and

(d) any request from a data subject for access to any of the Customer Personal Data,

(e) at the cost and expense of Client, except in the case of (a), where the circumstances giving rise to the investigation are the result of the act or omission of the Provider or a security incident affecting the Provider's systems.

22.5 The Provider shall only provide access directly to a data subject after written approval by Client unless the Provider is obligated to provide access according to applicable law, in which case the Provider may provide such access but shall inform Client prior to doing so.

22.6 The Provider shall ensure that access to the Customer Personal Data is limited to those Provider personnel who have a reasonable need to access the Customer Personal Data to enable the Provider to perform its duties under this License Agreement; any access to the Customer Personal Data shall be limited to such part or parts of the Customer Personal Data as are strictly necessary.

22.7 The Provider shall take reasonable steps to ensure the reliability of any Provider personnel who have access to the Customer Personal Data. Without prejudice to this general obligation, the Provider shall ensure that all relevant Provider personnel are informed of the confidential nature of the Customer Personal Data, have undertaken training in the laws relating to handling Personal Data, and are aware of the Provider's duties in respect of that Personal Data.

23. Warranties

23.1 The Provider warrants to Client that:

(a) the Provider has the legal right and authority to enter into this License Agreement and to perform its obligations under this License Agreement;

(b) the Provider will comply with all applicable legal and regulatory requirements applying to the exercise of the Provider's rights and the fulfilment of the Provider's obligations under this License Agreement; and

(c) the Provider has or has access to all necessary know-how, expertise and experience to perform its obligations under this License Agreement.

23.2 The Provider warrants to Client that:

(a) the Platform and Hosted Services will conform in all material respects with the SLA;

(d) the Hosted Services will be free from Hosted Services Defects;

(e) the application of Updates and Upgrades to the Platform by the Provider will not introduce any Hosted Services Defects into the Hosted Services.

(f) the Platform will be free from viruses, worms, Trojan horses, ransomware, spyware, adware and other malicious software programs; and

(g) the Platform will incorporate security features reflecting the requirements of good industry practice.

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23.3 The Provider warrants to Client that the Hosted Services, when used by Client in accordance with this License Agreement, will not breach any laws, statutes, or regulations applicable under the laws of any jurisdiction in which the Hosted Services are to be deployed.

23.4 The Provider warrants to Client that the Hosted Services, when used by Client in accordance with this License Agreement, will not infringe the Intellectual Property Rights of any person in any jurisdiction and under any applicable law.

23.5 If the Provider reasonably determines, or any Third-Party alleges, that the use of the Hosted Services by Client in accordance with this License Agreement infringes any person's Intellectual Property Rights, the Provider may at its own cost and expense:

23.6 modify the Hosted Services in such a way that they no longer infringe the relevant Intellectual Property Rights; or

23.7 procure for Client the right to use the Hosted Services in accordance with this License Agreement.

23.8 The Customer warrants to the Provider that it has the legal right and authority to enter into this License Agreement and to perform its obligations under this License Agreement.

23.9 All of the parties' warranties and representations in respect of the subject matter of this License Agreement are expressly set out in this License Agreement. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of this License Agreement will be implied into this License Agreement or any related contract.

24. Acknowledgements and warranty limitations

24.1 The customer acknowledges that complex software is never wholly free from defects, errors, and bugs; and subject to the other provisions of this License Agreement, the Provider gives no warranty or representation that the Hosted Services will be wholly free from defects, errors, and bugs.

24.2 The customer acknowledges that complex software is never entirely free from security vulnerabilities; and subject to the other provisions of this License Agreement, the Provider gives no warranty or representation that the Hosted Services will be entirely secure.

24.3 The customer acknowledges that the Hosted Services are designed to be compatible only with that software and those systems specified as compatible in the SLA; and the Provider does not warrant or

represent that the Hosted Services will be compatible with any other software or systems.

24.4 The customer acknowledges that the Provider will not provide any legal, financial, accountancy or taxation advice under this License Agreement or in relation to the Hosted Services; and, except to the extent expressly provided otherwise in this License Agreement, the Provider does not warrant or represent that the Hosted Services or the use of the Hosted Services by Client will not give rise to any legal liability on the part of Client or any other person.

25. Indemnities

25.1 The Provider shall indemnify and shall keep indemnified Client against any and all liabilities, damages, losses, costs and expenses (including legal expenses and amounts reasonably paid in settlement of legal claims) suffered or incurred by Client and arising directly or indirectly as a result of any breach by the Provider of this License Agreement (a "Provider Indemnity Event").

25.2 The customer shall:

upon becoming aware of an actual or potential Provider Indemnity Event, notify the Provider;

(a) provide to the Provider all such assistance as may be reasonably requested by the Provider in relation to the Provider Indemnity Event;

(b) allow the Provider the exclusive conduct of all disputes, proceedings, negotiations, and settlements with third parties relating to the Provider Indemnity Event; and

(c) not admit liability to any Third-Party in connection with the Provider Indemnity Event or settle any disputes or proceedings involving a Third-Party and relating to the Provider Indemnity Event without the prior written consent of the Provider.

(d) The customer shall indemnify and shall keep indemnified the Provider against any and all liabilities, damages, losses, costs and expenses (including legal expenses and amounts reasonably paid in settlement of legal claims) suffered or incurred by the Provider and arising directly or indirectly as a result of any breach by Client of this License Agreement (a "Customer Indemnity Event").

25.3 The Provider shall:

(a) upon becoming aware of an actual or potential Customer Indemnity Event, notify

Client;

(b) provide to Client all such assistance as may be reasonably requested by Client in relation to the Customer Indemnity Event;

(c) allow Client the exclusive conduct of all disputes, proceedings, negotiations, and settlements with third parties relating to the Customer Indemnity Event; and

(d) not admit liability to any Third-Party in connection with the Customer Indemnity Event or settle any disputes or proceedings involving a Third-Party and relating to the Customer Indemnity Event without the prior written consent of Client, and the Customer's obligation to indemnify the Provider under Clause 25.2 shall not apply to the extent that the Provider is prejudiced by a failure of the Provider to comply with the requirements of this Clause 25.3.

25.4 The indemnity protection set out in this Clause 25 shall be subject to the limitations and exclusions of liability set out in this License Agreement.

26. Limitations and exclusions of liability

26.1 Nothing in this License Agreement will:

(a) limit or exclude any liability for death or personal injury resulting from negligence;

(b) limit or exclude any liability for infringement of a third party's intellectual property rights, breach of confidentiality, breach of privacy, fraud or fraudulent misrepresentation;

(c) limit any liabilities in any way that is not permitted under applicable law; or

(d) exclude any liabilities that may not be excluded under applicable law.

26.2 The limitations and exclusions of liability set out in this Clause 26 and elsewhere in this License Agreement: are subject to Clause 26.1; and govern all liabilities arising under this License Agreement or relating to the subject matter of this License Agreement, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in this License Agreement.

26.3 Neither party shall be liable to the other party in respect of any losses arising out of a Force Majeure Event.

26.4 Neither party shall be liable to the other party in respect of any loss of profits or anticipated savings.

26.5 Neither party shall be liable to the other party in respect of any loss of revenue or income.

26.6 Neither party shall be liable to the other party in respect of any loss of use or production.

26.7 Neither party shall be liable to the other party in respect of any loss of business, contracts, or opportunities.

26.8 Neither party shall be liable to the other party in respect of any loss or corruption of any data, database, or software; providing that this Clause 26.8 shall not protect the Provider unless the Provider has fully complied with its obligations under Clauses 11.3, 11.4, 23.2(f), 23.2(g), and 23.3.

26.9 This shall only be valid if the opponent party has fully complied with its obligations under Clause 20 of this License agreement. "

26.10 Neither party shall be liable to the other party in respect of any special, indirect or consequential loss or damage.

26.11 Per event liability cap upon services contract.

26.12 The liability of each party to the other party under this License Agreement in respect of any event or series of related events shall not exceed the greater of:

(a) € 10.000; or

(b) the total amount paid and payable by Client to the Provider under this License Agreement in the 12-month period preceding the commencement of the event or events

Aggregate liability cap upon services contract

26.13 Subject to the provisions of 26.1 above, the aggregate liability of each party to the other party under this License Agreement shall not exceed the greater of:

26.14 One year of license fee; or the total amount paid and payable by Client to the Provider under this License Agreement.

27. Force Majeure Event

27.1 If a Force Majeure Event "(i) circumstances beyond one's control; (ii) flood, fire, earthquake, pandemic, epidemic or explosion; (iii) war, invasion, hostilities

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(whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (iv) government order, law, regulation or other actions; (v) embargoes or blockades in effect on or after the date of this Agreement; (vi) national or regional emergency; (vii) strikes, labor stoppages or slowdowns or other industrial disturbances; or (viii) other events beyond the reasonable control of the Impacted Party (each, a "Force Majeure Event", gives rise to a failure or delay in either party performing any obligation under this License Agreement (other than any obligation to make a payment), that obligation will be suspended for the duration of the Force Majeure Event.

27.2 A party that becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in that party performing any obligation under this License Agreement, shall:

(a) promptly notify the other; and

(b) inform the other of the period for which it is estimated that such failure or delay will continue.

27.3 A party whose performance of its obligations under this License Agreement is affected by a Force Majeure Event shall take reasonable steps to mitigate the effects of the Force Majeure Event.

28. Termination

28.1 The Provider may terminate this License Agreement by giving to Client not less than 12 months' written notice of termination, expiring after the end of the Minimum Term. The customer may terminate this License Agreement by giving to the Provider not less than 12 months' written notice of termination, expiring after the end of the Minimum Term.

28.2 Either party may terminate this License Agreement immediately by giving written notice of termination to the other party if:

28.3 the other party commits any material breach of this License Agreement, and the breach is not remediable;

28.4 the other party commits a material breach of this License Agreement, and the breach is remediable, but the other party fails to remedy the breach within the period of 30 days following the giving of a written notice to the other party requiring the breach to be remedied; or

28.5 the other party persistently breaches this License Agreement (irrespective of whether such breaches collectively constitute a material breach).

28.6 Either party may terminate this License Agreement immediately by giving written notice of termination

to the other party if the other party:

(a) is dissolved;

(b) ceases to conduct all (or substantially all) of its business;

(c) is or becomes unable to pay its debts as they fall due;

(d) is or becomes insolvent or is declared insolvent.

(e) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;

(f) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganization where the resulting entity will assume all the obligations of the other party under this License Agreement); or

28.7 if that other party is an individual: that other party dies;

(a) as a result of illness or incapacity, that other party becomes incapable of managing his or her own affairs; or

(b) that other party is the subject of a bankruptcy petition or order.

28.8 The Provider may terminate this License Agreement immediately by giving written notice to Client if:

(a) any amount due to be paid by Client to the Provider under this License Agreement is unpaid by the due date and remains unpaid upon the date that that written notice of termination is given; and

(b) the Provider has given to Client at least 30 days' written notice, following the failure to pay, of its intention to terminate this License Agreement in accordance with this Clause 28.4.

29. Effects of termination

29.1 Upon the termination of this License Agreement, all of the provisions of this License Agreement shall cease to have effect, save that the following provisions of this License Agreement shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely): Clauses 12.11, 13, 17.2, 17.3, 19, 20, 21, 22, 23, 24, 26, 27, 30, 31, 34, 35, 36, 37, 38, 39 and 40.

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29.2 Except to the extent that this License Agreement expressly provides otherwise, the termination of this License Agreement shall not affect the accrued rights of either party.

29.3 Within 30 days following the termination of this License Agreement for any reason:

(a) Client shall pay to the Provider any Charges in respect of Services provided to Client before the termination of this License Agreement; and

(b) the Provider shall refund to Client any Charges paid by Client to the Provider in respect of Services that were to be provided to Client after the termination of this License Agreement, without prejudice to the parties' other legal rights.

30. Non-solicitation of personnel

30.1 The customer shall not, without the prior written consent of the Provider, either during the Term or within the period of 6 months following the end of the Term, engage, employ or solicit for engagement or employment any employee or subcontractor of the Provider who has been involved in any way in the negotiation or performance of this License Agreement.

30.2 The Provider shall not, without the prior written consent of Client, either during the Term or within the period of 6 months following the end of the Term, engage, employ or solicit for engagement or employment any employee or subcontractor of Client who has been involved in any way in the negotiation or performance of this License Agreement.

31. Notices

31.1 Any notice given under this License Agreement shall be in writing, whether or not described as "written notice" in this License Agreement.

31.2 Any notice given by Client to the Provider under this License Agreement shall be:

(a) delivered personally;

(b) sent by recorded signed-for post; or

(c) sent by email,

(d) using the relevant contact details

31.3 Any notice given by the Provider to Client under this License Agreement shall be:

(a) delivered personally;

(b) sent by recorded signed-for post; or

(c) sent by email,

(d) using the relevant contact details set out in the SLA.

31.4 The addressee and contact details may be updated from time to time by a party giving written notice of the update to the other party in accordance with this Clause 31.

31.5 A party receiving from the other party a notice by email shall acknowledge receipt by email promptly, and in any event within 2 Business Days following receipt of the notice.

31.6 A notice will be deemed to have been received at the relevant time set out below or, where such time is not within Business Hours, when Business Hours next begin after the relevant time set out below:

31.7 in the case of notices delivered personally, upon delivery;

31.8 in the case of notices sent by post, 48 hours after posting; and

31.9 in the case of notices sent by email, at the time of the sending of the email (providing that the sending party retains written evidence that the email has been sent).

32. Subcontracting

32.1 The Provider shall not subcontract any of its obligations under this License Agreement without the prior written consent of Client, providing that Client shall not unreasonably withhold or delay the giving of such consent.

32.2 The Provider shall remain responsible to Client for the performance of any subcontracted obligations.

32.3 Notwithstanding any other provision of this License Agreement, Client acknowledges and agrees that the Provider may subcontract to any reputable third-party hosting business the hosting of the Platform and the provision of services in relation to the support and maintenance of elements of the Platform.

32.4 Notwithstanding any other provision of this License Agreement, Client acknowledges and agrees that the Provider may subcontract the 'Softcrow Services' and Zertic Continuity, including their Third-Party hosting business the hosting of the Platform and the provision of services in relation to the support and maintenance of elements of the Platform.

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33. Assignment

33.1 The Provider shall not assign, transfer or otherwise deal with the Provider's contractual rights and/or obligations under this License Agreement without the prior written consent of Client, such consent not to be unreasonably withheld or delayed, providing that the Provider may assign the entirety of its rights and obligations under this License Agreement to any Affiliate of the Provider or to any successor to all or a substantial part of the business of the Provider from time to time.

33.2 The customer shall not assign, transfer or otherwise deal with the Customer's contractual rights and/or obligations under this License Agreement without the prior written consent of the Provider, such consent not to be unreasonably withheld or delayed, providing that Client may assign the entirety of its rights and obligations under this License Agreement to any Affiliate of the Customer or to any successor to all or a substantial part of the business of Client from time to time.

34. No waivers

34.1 No breach of any provision of this License Agreement will be waived except with the express written consent of the party not in breach.

34.2 No waiver of any breach of any provision of this License Agreement shall be construed as a further or continuing waiver of any other breach of that provision or any breach of any other provision of this License Agreement.

35. Severability

35.1 If a provision of this License Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions will continue in effect.

35.2 If any unlawful and/or unenforceable provision of this License Agreement would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect.

36. Third-Party rights

36.1 This License Agreement is for the benefit of the parties and is not intended to benefit or be enforceable by any third party.

36.2 The exercise of the parties' rights under this License Agreement is not subject to the consent of any third party. Excluding the portal use by Client customers.

37. Variation

37.1 This Agreement may not be varied except by means of a written document signed by or on behalf of each party.

38. Entire Agreement

38.1 The main body of this License Agreement and the Schedules shall constitute the entire Agreement between the parties in relation to the subject matter of this License Agreement, and shall supersede all previous agreements, arrangements, and understandings between the parties in respect of that subject matter.

38.2 The Provider's standard terms that are posted on its website do not apply in respect of the Services.

38.3 The provisions of this Clause 38 are subject to Clause 26.1.

39. Law and jurisdiction

39.1 This License Agreement shall be governed by and construed in accordance with Dutch law.

39.2 Any disputes relating to this License Agreement shall be subject to the non-exclusive jurisdiction of the regional court of the legal district in which Client resides.

40. Interpretation

40.1 In this License Agreement, a reference to a statute or statutory provision includes a reference to:

(a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and

(b) any subordinate legislation made under that statute or statutory provision.

40.2 The Clause headings do not affect the interpretation of this License Agreement.

40.3 References in this License Agreement to "calendar months" are to the 12 named periods (January, February and so on) into which a year is divided.

40.4   In this License Agreement, general words shall not be given a restrictive interpretation by reason of being preceded or followed by words indicating a particular class of acts, matters or thing

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